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ABSTRACT

In this congressional hearing on women in the labor force, focus is on the problems of wage discrimination and specific means of eradicating this injustice. Testimony includes statements and submissions for the record (prepared statements and reports) from United States Senators and from individuals representing the Committee on Women's Employment and Related Social Issues, National Research Council, National Academy of Sciences; American Federation of State, County, and Municipal Employees; Emory University, Atlanta, Georgia; E.R. Clarke Associates, Inc.; and the National Committee on Pay Equity. (YLB)

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WOMEN IN THE WORK FORCE: PAY EQUITY

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HEARING

BEFORE THE

JOINT ECONOMIC COMMITTEE
CONGRESS OF THE UNITED STATES

NINETY-EIGHTH CONGRESS

SECOND SESSION

APRIL 10, 1984

Printed for the use of the Joint Economic Committee

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WOMEN IN THE WORK FORCE: PAY EQUITY

TUESDAY, APRIL 10, 1984

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9 a.m., in room 2203, Rayburn House Office Building, Hon. Olympia J. Snowe (member of the committee) presiding.

Present: Representative Snowe.

Also present: Deborah Clay-Mendez and Mary E. Eccles, professional staff members; and Lesley Primmer, legislative assistant to Representative Snowe.

OPENING STATEMENT OF REPRESENTATIVE SNOWE, PRESIDING

Representative SNOWE. I welcome you to the third hearing in a four-part series before the Joint Economic Committee on women in the labor force. This series began last November with an examination of the special analysis, "American Women: Three Decades of Change," prepared by the Census Bureau. Although the report's title underscores the dramatic change in women's lives since 1950, today's hearing will focus on one area where tragically little has progressed. Today, as 30 years ago, working women earn less than two-thirds the wages of working men.

The first two hearings examined the growing proportion of women and children in poverty, the difficulty women have in finding affordable child care that would allow them to work, and the lack of incentives for women to move from welfare to low-paying, traditionally female jobs, foregoing the security of, among other things, medical care for their children. And throughout these hearings one thing has been clear: The common theme that dominates women's labor force participation is the earnings gap between men and women.

Today's hearing will address the problems of wage discrimination and examine specific means of eradicating this injustice. Wage discrimination exists in many forms. For example:

The Census Bureau cited a study done in 1981 that looked at 91 occupations where there were enough men and women to compare earnings. In each of the 91 occupations, women's median earnings were below those of men. Even in traditionally female occupations, like cashiers and food service workers, women's wages were lower;

In Washington State, the AFSCME case which we will hear about in more detail today, found significant disparities in closely related, but segregated, jobs such as barber and beautician; and

The most widespread wage discrimination exists in those low-paying, dead-end jobs where the majority of women remain segregated. The National Academy of Sciences summarized the problem this way in their 1981 report: "The more an occupation is dominated by women, the less it pays."

The causes of the wage gap and occupational segregation are the subject of heated debate among some economists. A consensus on the direction public policy need take is similarly lacking. The economic implications for women's lives, however, are clear. American women will not secure true economic equity until they are guaranteed a fair wage for the work they do. Freedom from discrimination in employment is the law of the land, and the lack of pay equity for the women of this country is the most urgent problem facing women in the labor force.

I am pleased to have a number of the leading spokespersons on the question of women and wages here today, and I want to thank each of you for participating in this hearing. I am particularly honored to welcome Senator Dan Evans, who as Governor of Washington in 1974, commissioned the first study of comparable worth in the country. Senator Evans has continued to serve as one of the primary advocates of pay equity in the U.S. Senate.

Heidi Hartmann, the coeditor of the National Academy of Sciences landmark report on "Women, Work, and Wages," and currently the study director of the Committee on Women's Employment and Related Social Issues at the Academy is with us today as well. I am also pleased to have two other leading economists here today, Cotton Mather Lindsay and Mark Killingsworth, who have examined the implications of various means of implementing pay equity for the economy. And finally, I want to welcome two leaders in the rapidly growing effort to eliminate sex-based wage discrimination: Winn Newman, who litigated the Washington State pay equity case for AFSCME, and Brian Turner, the director of legislation and economic policy for the industrial union of the AFL-CIO, who will be representing the National Committee on Pay Equity.

We will hear first from Ms. Hartmann.

STATEMENT OF HEIDI HARTMANN, STUDY DIRECTOR, COMMITTEE ON WOMEN'S EMPLOYMENT AND RELATED SOCIAL ISSUES, NATIONAL RESEARCH COUNCIL, NATIONAL ACADEMY OF SCIENCES

Ms. **Hartmann**. I am Heidi Hartmann, study director of the Committee on Women's Employment and Related Social Issues, within the Commission on Behavioral and Social Sciences and Education, one of eight major divisions of the National Research Council. The National Research Council is the principal operating arm of the National Academy of Sciences/National Academy of Engineering. In accordance with the Academy's congressional charter, enacted in 1863, the National Research Council responds to requests from executive branch agencies and the Congress for advice on scientific and technical questions, and on occasion, takes the initiative in proposing studies on topics of national concern.

The Committee on Women's Employment and Related Social Issues is a continuing committee that has as its goal the examination of scientific evidence regarding women's employment and the marshaling of this evidence to contribute to the policymaking process. The Committee, chaired by Alice Ilchman, president of Sarah Lawrence College, consists of 14 members who are experts on women's employment issues and serve as volunteers. It is currently completing a report on the extent, causes, and effects of job segregation by sex in the labor market; it recently held a seminar on research needs in the comparable worth area; and it is curently establishing a panel to undertake a study of how technological change is affecting women's employment opportunities. Its work is supported by a variety of Federal agencies and private foundations. The committee's ongoing work in the area of women's employment builds upon the work completed in 1981 by the Committee on Occupational Classification and Analysis regarding comparable worth. I served as research associate with that committee and I am pleased to be here today to summarize its findings and respond to your questions.

The committee's full findings can be found in its report, "Women, Work, and Wages: Equal Pay for Jobs of Equal Value," published by the National Academy Press. The committee was established by the National Academy of Sciences in 1978 at the request of the Equal Employment Opportunity Commission to undertake a study of the issues involved in measuring the comparability of jobs. Assembled to serve on the committee were experts from psychology, sociology, statistics, and economics chosen for their extensive knowledge in issues related to measuring and evaluating the content of occupations, the operation of labor market, and statistical methodology. In addition, several members had expertise in labor and industrial relations, personnel policy, and equal employment opportunity. The committee was chaired by Ann R. Miller, professor of sociology at the Population Studies Center, University of Pennsylvania.

I want to point out that, as you said, there are many individual economists and there is much controversy and there are many differences of opinion. I want to stress that one of the things about the National Academy of Sciences report is that a committee is established that represents many different viewpoints and it is hoped that that committee will come to a consensus on the issues at hand; essentially that is what this committee did. It represented many different viewpoints and so I think its conclusions should be held in somewhat greater respect than the opinions of individual economists which, like my own, differ from those of other individual economists.

The committee reviewed a large portion of the social science literature regarding sex-based wage differentials, the effects of discrimination, the operation of labor markets, and the usefulness of job evaluation as a methodology to compare jobs for the purpose of determining equitable pay rates. Several issues, such as the legal status of comparable worth claims, the cost to the economy of implementing comparable worth, or the administration of a potential comparable worth policy, were not addressed by the committee. The committee also limited its discussion of comparable worth to reducing wage inequities within the context of a single firm or employer. An economywide governmental regulation of wage rates is specifically excluded from consideration. The committee's report discusses comparable worth in terms of orderly change at the establishment level.

In brief, the committee found, after reviewing the evidence, that there is substantial discrimination in pay; that job segregation is pervasive and not entirely the result of women's choices; that women are concentrated in low-paying jobs that are low paying at least partly because women do them; that, because discrimination has in many instances been institutionalized, it is difficult to ascertain the appropriate remedy, but that job evaluation methods hold some promise as aids in adjusting the wages of women's jobs in an equitable manner. I would like to append to my oral statement today the conclusion of the committee's report.

Let me briefly review some of the evidence leading to the committee's conclusions. It is well-known that on average the earnings of women who are employed full-time are approximately 60 percent of those of men who are also employed full time. It is also well-established that sex segregation in the labor market is extreme and has not changed much since 1900. Fully two-thirds of men or women would have to change jobs for their distribution across occupations to be similar. Job segregation also contributes to women's lower earnings. The committee performed several statistical analyses to demonstrate the connection between sex segregation and the earnings differential, which you have already referred to, Representative Snowe.

For example, in one exercise we show that 35 to 40 percent of the earnings gap could be attributed to sex segregation. The committee pointed out, however, that our measures of sex segregation and of the earnings differences attributable to it are both likely to be underestimates because we simply do not have sufficiently detailed information to measure the extent and consequences of sex segregation fully. Sex segregation occurs within and between firms and industries, as well as within and between occupations, but most of our data are at the occupational level.

In another exercise, we calculated the average loss in annual income to the incumbents of female dominated occupations. Each extra percentage point in the proportion female of an occupation lowered its annual average wage by $42. This meant that in 1970 women's work paid on average about $4,000 less per year than men's work.

So far these exercises only further establish the fact that female occupations are low paying. They do not explain why that might be the case. Therefore, we also tried to estimate how much of this lower pay might be due to factors that could be regarded as legitimate, factors such as differences in the average education or experience of the incumbents or in other attributes of the jobs, as measured by the Department of Labor's Dictionary of Occupational Titles. If female dominated jobs pay less because women in them have less education, training, and experience or because the jobs require less skill, complexity, or autonomy, then their lower earning might not be cause for concern. We found that the association between earnings and percent female was still quite strong—$28 less for every percentage point increase in proportion female—even when differences in human capital and job requirements were taken into account.

These results on earnings differentials among occupations were quite consistent with the findings of a substantial body of evidence reviewed by the committee; namely, the social science research of the last 25 years on earnings differentials. The committee concluded that the studies available at the time could not explain more than one-quarter to one-half of the earnings differential. While the commitee took cognizance of the controversy surrounding the interpretation of this unexplained differential—specifically, whether or not it could be attributed to discrimination—it did conclude that discrimination in pay is widespread and that, in particular, the wage rates of jobs traditionally held by women are depressed. The committee based its judgment on the statistical evidence coupled with knowledge of the extensive and openly acknowledged past discrimination against women—such as that found by Winn Newmann in the IUE cases against Westinghouse and General Electric—research on how labor markets work to institutionalize and perpetuate pay setting practices, and evidence from the few comparable worth investigations that had occurred by 1980; namely, Winn Newman's work and the salary survey of the State of Washington civil service. In other words, the committee concluded that the wage rates of women's jobs are depressed because women do them. Women are concentrated in low-paying jobs, not solely out of choice—though choice may play some role—and not because these jobs would be low paying regardless of who did them but rather as the result of earlier traditions of discrimination against women that have become institutionalized—as well as, possibly, current intentional discrimination; for example, the committee reviewed several studies which indicated that when women and men with similar educational and work backgrounds entered firms, they were placed in different starting positions, with far-reaching effects for their subsequent promotional opportunities and wage-earnings profiles. It is important to note that, for the committee, the use of the term "discrimination" does not imply intent but refers only to outcome.

Past discrimination is perpetuated by a labor market in which various institutional features predominate. Both workers and employers generally seek stability of employment and create personnel practices that encourage it: rewards for seniority, eligibility requirements for promotion, investment in training. Generally neither workers nor employers make full use of alternative opportunities: Employers fill many jobs from within rather than considering outside applicants and workers seldom engage in extensive job searches. For whatever reason these practices have arisen, and there is considerable debate about them, they tend to insulate many employment practices from market forces; hence, the effects of whatever discrimination has occurred in the past tend to be perpetuated in the absence of conscious efforts at change. Consequently, current wage rates of men's and women's jobs are likely to incorporate the effects of discrimination. Wage rates, then, are not a bias-free standard of job worth; a job is not necessarily paid what it is worth. The committee next examined job evaluation systems as aids in determining appropriate remedies, but before turning to that issue, I want to comment on pay equity for minorities.

The committee notes in its report that, although it emphasized pay equity for women, the pay equity issue applies in principle to any group that has been discriminated against and whose members are concentrated in particular jobs. The concentration of minority races or ethnic groups into particular jobs is not especially evident in national data on occupations, although there are some disproportions. In fact, in national-level data, race segregation has declined substantially since 1940—largely because black women are no longer entirely restricted to domestic service—and the black-white earnings gap has narrowed. Nevertheless, it is likely that whenever blacks or other minorities are concentrated in particular jobs—and such concentrations may be more apparent at the local and regional level—the wage levels of those jobs are depressed because of discrimination. Realigning the wage rates of such jobs to eliminate discrimination would be an appropriate remedy.

Is job evaluation a useful aid in determining appropriate remedies for wage discrimination? The committee's answer was a qualified yes—the methodology has potential. The committee was less than enthusiastic about present-day job evaluation plans because of a number of weaknesses it had identified in its interim report. "Job Evaluation: An Analytic Review." Simply put, our existing job evaluation systems do not reflect advances in social science measurement techniques that have been made in the last 40 to 50 years since job evaluation systems were first developed. And many individual instances of probable bias were discovered in its review of existing plans. For example, one job evaluation plan used "length of time to become fully trained" to measure skill and rated typing as requiring 2 months and truck driving as requiring 1 year. The committee also noted that many job evaluation plans are developed by using market wage rates to identify and weigh the features of jobs that are to be valued. Such a procedure tends to perpetuate in the job evaluation plan the discriminatory effects of existing wage rates.

Job evaluation plans have been widely used in U.S. industry since the 1930's. These plans are used to order jobs hierarchically on the basis of judgments regarding their relative skill, effort, responsibility, working conditions, et cetera, and on this basis to group them into pay classes. The job features that are measured and valued in job evaluation plans are often called compensable factors. The scores on each of the compensable factors are combined to provide a total job worth score for each job that is then associated with a pay class. These plans make the criteria for compensation explicit. Their goal is to bring consistency to a firm's internal wage structure. Since these plans reflect what employers value in jobs, they have obvious potential as a standard for determining whether jobs are paid what they are worth to their employer and whether wage rates of various jobs need to be realigned.

In its report, the committee stresses that there is no strict scientific basis for determining the standards of job worth. What should be valued about jobs is not a scientific question. Rather, once that question has been answered by a process that elicits value decisions, social science measurement techniques can be used to measure the extent to which various jobs incorporate the characteristics valued. That is, it is not up to a scientist to decide that the degree of responsibility that a job entails should be valued for the purposes of determining its pay level. But once an employer, perhaps in conjunction with employees, has made that determination, scientists can help ensure that the factors identified to measure the degree of responsibility of jobs are indeed good indicators of responsibility. For example, if responsibility is to be valued, a social scientist can identify factors that fully reflect various kinds of responsibility and that fully reflect the range of variation in those factors. If responsibility were only to be measured by number of people supervised and if the rating scale took into account only whether the number supervised were over or under five, most people would probably agree that responsibility was not being adequately measured. The social scientist can develop a fuller range of measures with appropriate rating scales. For example, responsibility for coordinating and scheduling can be included and appropriate measures can be devised. The process of improving job evaluation systems is, of course, an ongoing one, and progress has been made. In the committee's judgment, however, presently available job evaluation plans were deemed to be behind the state of the art.

The committee offered specific suggestions for methods to eliminate the effect of discrimination in wage rates from factor weights. Those plans that use existing market wage rates to develop factor weights can be modified by taking into account the fact that wages are correlated with percent female. That is, if percent female of an occupation has an effect on the wage of the job independent of the substantive characteristic of the job—such as complexity, skill required, responsibility entailed, and so forth—then this effect should be eliminated before it is incorporated into factor weights. The committee suggested that experimentation with several different methods of elimination be carried out.

Regardless of whether job evaluation plans are modified in their details, they do have the merit of making explicit and consistent the criteria for compensation. In doing so, they have the potential to eliminate pay differentials based solely on the sex or minority status of the incumbents.

It is important to note, however, that the committee's qualified endorsement of the value of job evaluation systems in resolving disputes over pay equity did not lead it to recommend enforcement standards for job evaluation. The committee did not offer prototype guidelines to the Equal Employment Opportunity Commission for their use in regulating the design and implementation of job evaluation plans. No particular type of job evaluation plan was endorsed by the committee for universal use in the United States. To the contrary, the committee stressed that appropriate job evaluation plans must be worked out within each firm or industry. Nor was the widespread adoption of job evaluation plans recommended. The committee believed that although they have potential, more research and development needs to take place before job evaluation systems could be wholeheartedly recommended. With sufficient research and development, though, job evaluation tools may well take their place alongside a host of other remedies thought necessary to insure equal employment opportunity in the United States.

[The conclusions of the report referred to by Ms. Hartmann follow:]

Excerpt from

Women, Work, and Wages: Equal Pay for Jobs of Equal Value*

Chapter 5, Conclusions

This report has been concerned with two questions: To what extent does the fact that women and minorities are on the average paid less than nonminority men reflect discrimination in the way jobs are compensated? If wage discrimination exists, what can be done about it?

On the basis of a review of the evidence, our judgment is that there is substantial discrimination in pay. Specific instances of discrimination are neither easily identified nor easily remedied, because the widespread concentration of women and minorities into low-paying jobs makes it difficult to distinguish discriminatory from nondiscriminatory components of compensation. One approach, which needs further development but shows some promise, is to use existing job evaluation plans as a standard for comparing the relative worth of jobs.

This chapter summarizes the evidence leading to these conclusions. In reviewing this material three considerations should be kept in mind.

First, discrimination, as the term is used in this report, does not imply intent but refers only to outcome. Wage discrimination exists insofar as workers of one sex, race, or ethnic group are paid less than workers of another sex, race, or ethnic group for doing work that is of "comparable," that is, equal, worth to their employer.

Second, the report has focused most intensively on sex discrimination because the issue of comparable worth arises largely in connection with job segregation, the propensity for men and women and for minority and nonminority workers to hold different sorts of jobs, and job segregation is more pronounced by sex than by race or ethnicity. Moreover,

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*1981; National Academy Press, Washington, D.C. 20418, $9.95.

while most available data are at the national level, minorities, because of their numbers and geographical distribution, are more likely to be concentrated in particular occupations at a local level. We have therefore not been able to examine differentials by race or ethnic group with the same procedures we used to examine differentials by sex. In addition, most of the available studies of patterns of employment within firms refer to differences between men and women. Finally, the available analyses relating to the relative worth of jobs pertain almost entirely to sex discrimination. In this context, the fact that we focus mainly on discrimination based on sex should not be interpreted to mean that the committee has judged discrimination based on race or ethnicity to be of lesser importance.

Third, we have not been able to make any assessment of what the social and economic consequences may be of implementing wage policies based on the principle of equal pay for jobs of equal worth. This is an extremely complex question, with no clear answers, which goes well beyond the charge to the committee. We do, however, want to call attention to the need to give careful thought to the possible impact of implementation of a policy of equal pay for jobs of equal worth on the economic viability of firms as well as on employment opportunities for women and minorities.

THE EXTENT AND THE SOURCES OF PAY DIFFERENTIALS

It is well established that in the United States today women earn less than men and minority men earn less than nonminority men. Among year-round full-time workers, the annual earnings of white women in the late 1970s averaged less than 60 percent of those of white men, while the earnings of black men averaged 70–75 percent of those of white men.

Such differential earnings patterns have existed for many decades. They may arise in part because women and minority men are paid less than white men for doing the same (or very similar) jobs within the same firm, or in part because the job structure is substantially segregated by sex, race, and ethnicity and the jobs held mainly by women and minority men pay less than the jobs held mainly by nonminority men. Since passage of the Equal Pay Act of 1963 and Title VII of the 1964 Civil Rights Act, legal remedies have been available for the first source of wage differentials. Although the committee recognizes that instances of unequal pay for the same work have not been entirely eliminated, we believe that they are probably not now the major source of differences in earnings.

With respect to the second source of wage differentials, the disparate distribution of workers among jobs and the concentration of women and minority men in low-paying jobs, the data are clear. Women and minorities are differentially concentrated not only by occupation but also by industry, by firm, and by division within firms. Moreover, the evidence shows that this differential concentration has persisted, at least with respect to women, over a substantial period of time. In the face of this differential concentration, then, the question of whether pay differentials are discriminatory can be stated quite simply: Would the low-paying jobs be low-paying regardless of who held them, or are they low-paying because of the sex, race, or ethnic composition of their incumbents?

To be able to state the question simply, however, is not to be able to answer it simply. In the committee's judgment, a correct response recognizes that both elements account for observed earnings differentials. Our economy is structured so that some jobs will inevitably pay less than others, and the fact that many such jobs are disproportionately filled by women and minorities may reflect differences in qualifications, interests, traditional roles, and similar factors; or it may reflect exclusionary practices with regard to hiring and promotion; or it may reflect a combination of both. However, several types of evidence support our judgment that it is also true in many instances that jobs held mainly by women and minorities pay less at least in part *because* they are held mainly by women and minorities. First, the differentials in average pay for jobs held mainly by women and those held mainly by men persist when the characteristics of jobs thought to affect their value and the characteristics of workers thought to affect their productivity are held constant. Second, prior to the legislation of the last two decades, differentials in pay for men and women and for minorities and nonminorities were often acceptable and were, in fact, prevalent. The tradition embodied in such practices was built into wage structures, and its effects continue to influence these structures. Finally, at the level of the specific firm, several studies show that women's jobs are paid less on the average than men's jobs with the same scores derived from job evaluation plans. The evidence is not complete or conclusive, but the consistency of the results in many different job categories and in several different types of studies, the size of the pay differentials (even after worker and job characteristics have been taken into account), and the lack of evidence for alternative explanations strongly suggest that wage discrimination is widespread.

IDENTIFYING AND ELIMINATING PAY DISCRIMINATION

The identification and correction of particular instances of pay discrimination are, however, not easy tasks. One procedure that has been suggested is to compare the actual rates of pay of jobs with the relative worth of jobs; wage discrimination would be suspected whenever jobs are not paid in accordance with their relative worth. This relative (or comparable) worth approach in turn requires a generally acceptable standard of job worth and a feasible procedure for measuring the relative worth of jobs. In our judgment no universal standard of job worth exists, both because any definition of the "relative worth" of jobs is in part a matter of values and because, even for a particular definition, problems of measurement are likely.

One approach to the relative worth of jobs avoids the issue of values by equating the worth of jobs with existing pay rates. In this approach, no comparable worth strategy is needed to adjust the pay rates of jobs, because the pay rates themselves reflect the relative worth of jobs. The belief that existing pay differentials between jobs provide a valid measure of the relative worth of jobs depends on the view that the operation of labor markets is freely competitive and that pay differentials primarily reflect differences in individual productivity and are not substantially influenced by discrimination. While there is a good deal of controversy about the nature of labor markets, in our view the operation of labor markets can be better understood as reflecting a variety of institutions that limit competition with respect to workers and wages and tend to perpetuate whatever discrimination exists. As a result of these institutional features of labor markets, existing wage rates do not in our judgment provide a measure of the relative worth of jobs that avoids discrimination.

Several of these institutional features are inherent to the current operation of labor markets and cannot easily be altered. Substantial investment in training makes it difficult for workers to shift from one occupation to another in search of higher pay. Moreover, even within specific occupations, workers are not generally free to sell their labor to the highest bidder; they are constrained by geographical location and imperfect information as well as by institutional arrangements designed to encourage the stability of the work force by putting a premium on seniority. Nor do employers generally seek labor on the open market; a large fraction of all jobs are filled through internal promotions or transfers. Finally, both the supply of and demand for labor and the pay rates offered are strongly affected by still other forces—particularly union contracts and governmental regulations. Whenever jobs are relatively insulated from market forces, traditional differences in pay rates tend to be perpetuated over time. Hence, insofar as differences in pay between jobs ever did incorporate discriminatory elements, they tend to be perpetuated.

JOB EVALUATION PLANS

Although no universal standard of job worth exists, job evaluation plans do provide standards and measures of job worth that are used to estimate the relative worth of jobs within many firms. In job evaluation plans, pay ranges for a job are based on estimates of the worth of jobs according to such criteria as the skill, effort, and responsibility required by the job and the working conditions under which it is performed. Pay for an individual, within the pay range, is set by the worker's characteristics, such as credentials, seniority, productivity, and quality of job performance. Job evaluation plans vary from firm to firm; both the criteria established and the compensable factors and relative weights used as measures of the criteria differ somewhat from plan to plan.

In our judgment job evaluation plans provide measures of job worth that, under certain circumstances, may be used to discover and reduce wage discrimination for persons covered by a given plan. Job evaluation plans provide a way of systematically rewarding jobs for their content—for the skill, effort, and responsibility they entail and the conditions under which they are performed. By making the criteria of compensation explicit and by applying the criteria consistently, it is probable that pay differentials resulting from traditional stereotypes regarding the value of "women's work" or work customarily done by minorities will be reduced.

But several aspects of the methods generally used in such plans raise questions about their ability to establish comparable worth. First, job evaluation plans typically ensure rough conformity between the measured worth of jobs and actual wages by allowing actual wages to determine the weights of job factors used in the plans. Insofar as differentials associated with sex, race, or ethnicity are incorporated in actual wages, this procedure will act to perpetuate them. Statistical techniques exist that may be able to generate job worth scores from which components of wages associated with sex, race, or ethnicity have been at least partly removed; they should be further developed.

Second, many firms use different job evaluation plans for different types of jobs. Since in most firms women and minority men are concentrated in jobs with substantially different tasks from those of jobs held by nonminority men, a plan that covers all jobs would be necessary in order to compare wages of women, minority men, and nonminority men. The selection of compensable factors and their weights in such a plan may be quite difficult, however, because factors appropriate for one type of job are not necessarily appropriate for all other types. Nevertheless, experiments with firm-wide plans might be useful in making explicit the relative weights of compensable factors, especially since they are already used by some firms.

Finally, it must be recognized that there are no definitive tests of the "fairness" of the choice of compensable factors and the relative weights given to them. The process is inherently judgmental and its success in generating a wage structure that is deemed equitable depends on achieving a consensus about factors and their weights among employers and employees.

The development and implementation of a job evaluation plan is often a lengthy and costly process. The underdeveloped nature of the technology involved, particularly the lack of systematic testing of assumptions, does not justify the universal application of such plans. In the committee's judgment, however, the plans have a potential that deserves further experimentation and development.

COMMITTEE ON OCCUPATIONAL CLASSIFICATION AND ANALYSIS

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ERNEST J. MCCORMICK, Professor Emeritus, Department of Psychological Sciences, Purdue University
GUS TYLER, Assistant President, International Ladies' Garment Workers' Union

Representative **Snowe**. Thank you very much, Ms. Hartmann, for your very informative and valuable testimony here this morning and also for giving us more insight into the report that was done by the National Academy of Sciences.

Let's begin with the final point that you just made concerning job evaluation studies. What research would you recommend to improve methodology so that the job evaluation studies could be more universally applied?

Ms. **Hartmann**. Well, I think one of the more important factors is trying to eliminate the effects of market wage rates on the factor weights. If you were valuing something on the job evaluation plan that's been associated with female jobs and has a low wage rate and therefore gets a low weight in the plan, that's a serious problem. And the committee offered several suggestions which really built upon the economic and sociological research on discrimination, what we know about what causes discrimination and can be used to try to eliminate discrimination from the process of weighing those factors.

I think there are other issues as well, though, such as the study of whether or not evaluators are biased when they look at a job that has female incumbents. We found absolutely no research of a field nature in which psychologists, who would be the people who would ordinarily do this, go out into a workplace, have different raters rating jobs—noting in the study where women do them, and noting in the study where men do them—and then testing whether or not their ratings of jobs are biased by the sex of the incumbents.

We did review some literature of other experiments which show that in fact observers generally are biased by the sex of the incumbent and yet there is not any study that is definitely applied to the field of job evaluation.

So there is actually an enormous field here for social science research and, unfortunately, Federal budgets are not very conducive to the undertaking of this kind of research. Neverthless, the Committee on Women's Employment, the successor committee, is coming out with a report this spring that will talk about research needs in the comparable worth area which we hope will encourage further research.

Representative **Snowe**. Would that be a role, though, which Congress could play provided we had additional resources or sufficient resources?

Ms. **Hartmann**. Well, I would certainly hope so.

Representative **Snowe**. I know the report was finalized in 1981 and as you mentioned the report did not recommend legislative initiatives or guidelines to the EEOC nor did it suggest that job evaluation plans could be universally applied. But my question is, how different could the NAS report be if written today or would there be any other recommendations today vis-a-vis what was written in 1981?

Ms. **Hartmann**. Well, that's an interesting question, the answer to which of course reflects my personal opinion, since the committee is not here to answer that.

Frankly, I don't think it would be much different. I don't think that in the last 2 years sufficient amounts of research have been done that would change the conclusions very much. The major studies—Winn Newman's work and the State of Washington case—were cited in the report and were a substantial input to the committee's decision.

I think that we have a great deal more public awareness and a great deal more public agitation, but I don't really think we have a great deal more knowledge on the issues that would substantially change what the committee said at that time.

Representative **Snowe**. I will make this my final question, I know you have to leave at 9:30. There still seems to be a lot of confusion about some of the terms that are used interchangeably; for example, comparable worth. I know you testified to that before the Post Office Subcommittee here in the House, explaining the fact that people use the term suggesting that wage regulations would be set throughout the country.

How can we avoid this confusion? And I'm hoping through this hearing, for example, to make it clear that comparable worth does not suggest that. Your report suggests, or it indicates, that we are talking about wages within one firm, within one employer. How can we get around this confusion to make it clear that comparable worth doesn't mean setting wage rates nationally?

Ms. **Hartmann**. Well, that is a good question. I think—and I must note that this is my personal opinion—unfortunately, it is in the interest of some people to create this confusion, to create a kind of an alarmism about what is being discussed.

I think that the transfer, in a sense, among women's groups to the term "pay equity" is an effort to get away from confusion surrounding the notion of comparable worth; that comparable worth and pay equity is an issue that comes about because of two illegal phenomena—job segregation by sex and wage discrimination. Those are already illegal and people know that and understand that, and yet when the concept is applied to the fact that women's occupations are underpaid, because women have been illegally concentrated in those occupations, somehow it changes the way we think about it. And I think what activists in the comparable worth or pay equity movement are trying to do is get us back to those basic principles, that we are really talking about job segregation and discrimination, and that, like other issues of discrimination, the single employer is responsible within the establishment.

Now the report certainly does try to clarify that and I hope these hearings will as well, but I do not think we should lose sight of the fact that a great deal of confusion and alarmism is in the interest of some people.

Representative **Snowe**. Thank you very much.

Ms. Hartmann, I appreciate you taking the time from your busy schedule and I know you have other engagements today. Thank you for being with us.

Ms. **Hartmann**. Thank you very much. And thank you, Senator Evans, for allowing me to go first. I know it's a matter of great privilege.

Representative **Snowe**. Our next witness is Senator Dan Evans from the State of Washington, who, as was mentioned earlier, was the first Governor in this country to initiate a comparable worth job evaluation study. So I'm pleased that Senator Evans could be with us here today to share his thoughts and expertise with the committee.

STATEMENT OF HON. DANIEL J. EVANS, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator EVANS. Thank you. Madam Chairman. I'm delighted to be here. In fact, it was very pleasant and informative to have had an opportunity to listen to Ms. Hartmann. This morning. I'd like to talk briefly and informally from the perspective of history. I'd like to dispell some of the myths which have grown about comparable worth, particularly those which have been tossed around recently as far as the term marketplace is concerned.

I believe pay equity, or comparable worth as many people call it, is a valuable tool for internal alignment within an organization of various jobs. Comparable worth or pay equity doesn't, in itself, raise or lower wages, however, it can and does create some orderly and equitable alignment internally of wages.

Now no method of accomplishing such order or equity is perfect and certainly, in spite of the protestations of some, neither is the famed marketplace.

Let me start with the history of Washington State. We have become more famous than I hoped we would. As far back as the early 1970's, shortly after I came into office as Governor, I found that the senior department heads and senior exempt personnel were being paid at rates that I felt were not adequate. We could not attract the kind of people I wanted as senior leaders in government and there was no apparent consistency between departments in their wage-setting practices at that time in the State of Washington.

I think it is significant to note that I sought advice from leaders in private industry in my State. My first association with the methods of job evaluation. which are now at stake in this comparable worth controversy, came from those leaders in private industry. They were methods which had been used for years in private industry to create the internal alignments within companies and within industries for their own salary-setting purposes. So this is no methodology which came out of either academia nor out of government. Job evaluation came out of private industry itself. Furthermore, it's astonishing to me now that so many opponents of comparable worth look on the whole method of job analysis as being some new and strange device that has not been used over the years. That simply is not true.

We found, as I suspected we would, when these evaluations were made, that there was a scattering all over the lot based on the then-current salaries of various office holders. Frankly, it was easy to identify who the incumbents in those offices were, especially by the difference between the ones who appeared to be way above a central pay line and those who were way below. The disparity was amplified by those jobs which, at least in comparison with others were overpaid as well as by some which were grossly underpaid, and it should be fairly obvious who might be filling those positions.

We acted on the basis of that study. We realigned positions. We raised salaries for some positions rather substantially, and we froze salaries in other positions for some period of time until they came back to alignment as a result of these studies.

We then extended the study to the classified personnel of the State to see whether that alignment was valid as it was compared with those who held the exempt positions, and it was during that study that we discovered the interesting phenomenon that those job classifications filled primarily by women appeared to be out-of-line in comparison with those job classifications which came out with the same point analysis filled primarily by men. It is important to emphasize that we were not seeking to prove that there was a disparity. It was almost by accident that we discovered the disparity in a much broader analysis of the job alignment.

We discovered some rather interesting things. For instance, that animal technicians—I guess a glorified term for zookeepers—received more at all levels than child care specialists. We paid more for the people who took care of our animals than those who took care of our children.

We discovered there was a wide variety of differences and embarked on a second study looking specifically at a series of job classifications filled almost exclusively by men comparing them with a wide range of job classifications filled almost exclusively by women.

The results, when presented to me, were astonishing. They were illustrated by two curves, one ranging from lower salaries to higher salaries and the other from the lower point system to the higher point system. These two rather discrete curves were about $150 a month apart and were drawn as evenly as one could imagine any theoretical curve that was to reflect an actual case. The curves showed that those jobs filled almost exclusively by men were about $150 a month higher in salary than those jobs filled by women based on the same point system.

Having discovered that, we embarked on a third study which was to establish some fundamental ideas of how we could correct this wage disparity, what it would cost, and how we would go about it. We got a much better picture from that study and then embarked on a fourth study which was to create a plan for implementation one which had sufficient alignment points within the more than 2,500 job classifications we had in State government. Based on the fourth study, I presented to the next session of the legislature a proposed budget with $7 million set aside for a gradual transition from the prevailing wage system we were then using to a new system.

Unfortunately, I guess, I left office at that same period of time and my successor in office didn't choose to follow through and it took the legislature several years before they carried the concept forward.

I then became president of Evergreen State College and helped establish a similar job evaluation for the college's exempt personnel which were the only ones we had control over. We are still using the system and have found that it works very well. There are a few problems with it however. There is little difficulty with people in terms of the point scores and the internal alignments of jobs at Evergreen, but I must point out that there are still more women in some of the lower paid jobs at Evergreen than there are in the higher paid jobs. However, we do, at least have the alignment of jobs in a better circumstance than we had before. The Evergreen experience is just a comment on the fact that no job evaluation system will reflect perfect equity.

Let me turn then to the question of market validity because there are many, some from the private sector and some from academia, who suggest that the marketplace itself is the most valid and in fact the only necessary tool for achieving pay equity.

First, I believe that the complexity of salary setting within a governmental body, particularly one as large as either the Federal Government or a State government, with several thousand job classifications, probably containing a wider variety than most private enterprises, makes salary setting extremely difficult.

The State of Washington and most other States in the Nation use what is called a prevailing wage analysis whereby salaries are set to reflect the outside marketplace with little to no accommodation of internal factors. In reflecting solely the outside marketplace, however, such analyses reflect abnormalities and the distortions which are present in that outside marketplace, and let me describe several of them to you.

Many years ago I worked with the Associated General Contractors and part of my responsibility was in negotiating labor contracts. It is an unnatural contest between the labor unions representing the crafts on one side and an organization representing contractors on the other. Those representing the workmen obviously have a strong personal interest in higher wages. Those representing the contractors on the other hand have a very strong interest in continuing work, getting the job done and avoiding at all costs, work stoppages or strikes.

The person who pays the wages is not represented at the bergaining table, for it's the owner of the building or a home or a factory who will ultimately pay by the negotiated contract, the wages of those who are working. Thus, you do not have the person who pays and the person who receives at opposite ends of the bargaining table, which I believe in part explains the reason that construction wages are as high as they are.

Another abnormality in the marketplace is a public utility—a monopoly, made so by governmental action. Their intent need is to continue to provide the service of that utility. If management raises salaries for those who seek higher wages, it can return to the public utilities commission and have pay raises passed along to the consumer in terms of higher rates. In fact, management's underlying rationale is that a higher wage base and a higher cost provides a broader base upon which too apply a rate of return and in fact will bring greater, rather than lesser, rewards to that utility.

Over the years, there has been unquestioned and special discrimination in the entry of women into certain jobs and occupations. The difficulty of entry into various apprenticeship programs for the crafts is indisputable. The difficulty of entry and the subtle and sometimes not so subtle discrimination in occupations such as police and fire organizations is rather well known. Although we are overcoming some of these barriers, we still have a long way to go. In fact, efforts to overcome discrimination in and of themselves, are abnormalities in what otherwise might be a perfect marketplace.

I suggest there are alternatives which come under the heading "comparable worth" or "pay equity" that are responsible and reasonable ways for Government to decide the internal alignments of jobs within its organization. I suggest, as I did at the beginning, that this does not necessarily incur extra costs to Government, nor does it mean that all wages will be raised. The findings may show as we found in the Washington State job classifications of management level positions, that some are being paid more than they actually should be.

This type of internal alignment can and has been done repsonsibly to bring equity to a pay system. I must emphasize, however, that we need go no further. I do not believe that Government should get into the business of requiring or setting the method of job classification in private industries or in individual companies. I think that's a perfect place for the marketplace to work.

If Government decides to lead in a new system and if because leading in a new system raises the job classifications and salaries of positions filled primarily by women, and if the result is that the best qualified for those positions choose to work for Government, I think industry will have to respond in the marketplace. And I suggest that would be the most appropriate and effective way to begin a major realignment in this country.

We don't need to go as far as some would suggest. We need go only as far as to enable Government to provide the same leadership it has provided over many, many years in the step-by-step progress we have made from where we were a century ago to where we are today in eliminating discrimination.

I suppose in the perfect world of academia, charts, theories and of papers written for publication, the market works perfectly and no other restrictions need be imposed. But if that were the case, then my extensive reading of the history of some interesting congressional hearings held in 1945 and 1963 would lead me to agree with those academicians. However, if the marketplace was perfect, then we would have had no need for Government intervention to establish child labor laws; we would have had no need for Government intervention to establish the Davis-Bacon Act. The Taft-Hartley Act, the Fair Labor Standards Act, and a whole host of other acts which were enacted to restrict the abnormalities of the marketplace to help promote a better arena for the marketplace to work, all would have been unwarranted interferences with the operation of market forces.

And it was in congressional hearings of 20 years ago that a concept of equal pay for equal work was bitterly fought over, one we have long since passed. At the time, however, Members of Congress, some of my former colleagues in the Senate particularly, argued that it was an invalid concept. It was their view that women in a particular job were simply not worth as much as men in the same job: they would not be in the job as long; they had families to consider; they wouldn't be as productive—there were all sorts of explanations offered then as to why equal pay for equal work was an invalid concept. And I suggest, Madam Chairman, that people reading the records of this meeting and others in 1984, 20-40 years from now will find some of the arguments against equal pay for equal worth just as ludicrous.

Thank you.

Representative SNOWE. Thank you very much, Senator Evans. The committee certainly appreciates the benefit of your expertise and experience with this issue and clearly you have a unique perspective among Members of both the House and Senate because you have watched the development of this issue of comparable worth over at least the last 10 years.

Can you tell me if the debate has changed at all since the time you were involved in this issue in 1974 in the State of Washington?

Senator EVANS. Yes; I think it has changed. In 1974, we appeared to be moving toward an analytical measurement of alignment within State government and, in fact, by 1976 had developed what I had felt and other leaders in State government felt and those who represented the employees of State government through the municipal employees' union, all felt was a reasonable process for that realignment and for doing something we thought at that time would be unique and would be leading the country. As I say, that was in the budget of 1976 and I didn't stick around to ensure that that budget was carried through and it, unfortunately, was not.

I think that history might have been very, very different if we had been able to move as we were attempting to do then in a step-by-step method. We would by now have fully implemented that concept and I think we would have done so with little of the rancor and the disruption and some of the arguments which have since grown up around this issue.

Representative SNOWE. Would the costs have been different for the State of Washington had they implemented it at the time that the study had been completed and at the time when you incorporated the $7 million in your budget in 1976?

Senator EVANS. Well, it's a little difficult—of course, 1976 dollars are considerably more precious than 1984 dollars, so we would have to do some kind of reanalysis as to the comparative costs then as compared to now.

Frankly, I think that if we had moved in this field we very likely—because we were on the leading edge—would have attracted the very best candidates for positions and I at least would have hoped that we would have been able to do our job in State government more efficiently and better than the average and probably would have seen efficiency grow to at least take up part, if not all, of the extra costs from raising wages through comparable worth.

Representative SNOWE. What was the reaction of the people of the State of Washington at the time the job evaluation study was conducted or had been completed, as well as the legislature? Was there any feeling of being threatened because of the job realignment or any difficulties involved in the process at the thought of implementing that study?

Senator EVANS. Well, it's a little hard to say with accuracy. We had done this series of studies, as I mentioned, over a period of several years and it had been a step-by-step process, each one developing a broader set of measuring points and moving toward an implementation plan. I think it would be accurate to say that there was not the intense discussion, probably not even as great or broad an awareness at that time as there is now, but by the same token, there was no apparent and loud opposition to the concept and, frankly, I think the legislature, given sufficient leadership from the Governor's office, would have adopted and carried forward the concept.

Representative SNOWE. Would the realignment have been completed by now?

Senator EVANS. Yes; it would have been essentially completed by now.

Representative SNOWE. Senator Evans, I certainly appreciate your testimony, and I would like to invite you to join me in asking questions of the subsequent witnesses if your time schedule permits.

Senator EVANS. I'd be delighted.

Representative SNOWE. Thank you very much for being here and sharing your very important perspective.

Next we will have Winn Newman, who litigated the case for the State of Washington and AFSCME.

STATEMENT OF WINN NEWMAN, COUNSEL, WINN NEWMAN LAW OFFICES, ACCOMPANIED BY LISA NEWELL, ASSOCIATE COUNSEL, ON BEHALF OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES [AFSCME]

Mr. NEWMAN. Thank you, Madam Chairman. I am accompanied by Lisa Newell, who is associate counsel with me in Washington State in several other sex-based wage discrimination cases.

AFSCME has actively promoted pay equity for many years. Immediately after the Supreme Court's decision, AFSCME instituted its litigation program to eliminate sex-based wage discrimination, by filing wage discrimination charges with EEOC against the city of San Jose. AFSCME has been a leader in pushing for studies to be done by various municipalities and States.

It now has filed more than a dozen charges against various States and cities, and has also filed two lawsuits. It has more lawsuits in the planning stages.

At the outset, I'd like to commend the Chair. I'm particularly pleased with your opening remarks and your regular and consistent contribution to the eradication of sex-based wage discrimination. I think the testimony of the two prior speakers—both Heidi Hartmann and Senator Evans—basically represent my views. I would commend particularly Senator Evans for having moved before the law people got after him, although I might say that there were lawsuits filed earlier than 1974. I filed a lawsuit alleging sex-based wage discrimination back in 1971. The example he gave of the zookeeper and child care really is worth just this one comment. We really learn which is more important, taking care of animals or children, rather early in life. We learn it when the kids go out to mow the lawns and the other kids go out and take care of babies and we know which sex gets paid for taking care of the grass as compared to taking care of the babies.

I would like to incorporate by reference my recent testimony at hearings before the Manpower and Housing Subcommittee of the Committee on Government Operations chaired by Congressman Barney Frank, and then talk about some of the issues.

There has already been much comment about comparable worth versus discrimination. Basically, comparable worth is not the issue that should be involved in any of these discussions. Discrimination is the issue. The law, title VII of the Civil Rights Act, prohibits discrimination in compensation on the basis of sex or race, and we know also that law does not refer to, discuss or even contain the words "comparable worth." Comparable worth and pay equity have become popular but not legal terms and indeed is now being used as a red herring, if you will, to avoid the issue of sex-based wage discrimination.

Title VII and *Gunther* prohibit an employer from paying its women and minority employees a lower wage for the work they perform because of their sex or race. I stress the discrimination issue. I think the discrimination issue here is no different from what is in the Equal Pay Act. It means you don't look at the worth of jobs. The worth of jobs has nothing to do with this issue. It has nothing to do with whether a man of a particular employer in a man's job is being paid $10 or $2 an hour. What this issue requires is that women working for that same employer be paid the same rate as those men. It matters not what the employer across the street pays. It matters not what all other employers in the country pay. I emphasize this because this argument has become the scapegoat that is being used—largely by economists and many others—that comparable worth will result in a Federal wage rate. Nothing could be farther from the truth.

But I do think it's important to recognize that this is a discrimination issue. Then one has to think in terms of bringing women up to the level of the men working with that particular employer. There is no basis, as a legal proposition—whatever the other merits may be—for lowering any wages. If there are to be changes in the wage rate, that would have to occur, from the standpoint of the law, after the discrimination has been eliminated.

The state of the law is clear. What did *AFSCME* do? I think basically what the *AFSCME* v. *State of Washington* case did is really put meat on the *Gunther* bones. It demonstrated the kind of evidence that will convince a court that discrimination really exists because all *Gunther* did is say where there is discrimination it's illegal. AFSCME put in a whole host of evidence to show that the wage rates resulted from discrimination.

That evidence addressed the State's role in creating a segregated work force which exists everywhere. Every employer segregated its work force then and, as just stated by Heidi Hartmann, still does.

It's now well established that segregation breeds discriminatory wages, just as we learned 20 years ago in the Supreme Court that segregation breeds discriminatory education and we learned that separation of the races or sexes in the workplace results in inequity in wages and other working conditions.

Washington State was no different from any other public or private employer, at least then. Indeed, then-Governor Evans made Washington State the first to take a genuine look at the issue and as he's already said, when the claim of sex discrimination was brought to his attention by AFSCME and other groups, he was one of the few public officials who chose not to hide and deny its existence but instead to do something about it, and he decided to put his money or at least the State's money and maybe his political life to some extent where his mouth was.

Unfortunately, the legislature chose to return to traditional lip-service but no money.

I suggest that only a bigot would contend that cost or the market authorizes an employer to engage in race discrimination or race-based wage discrimination. Judge Tanner held that sex discrimination is equally invidious and devastating, but he's hardly the first court to have held that sex discrimination is the same as race.

I think it's critical that those who wish to perpetuate wage discrimination against women be treated and looked at no differently from those who advocate the perpetuation of race-based wage discrimination. I think sex bigotry has to be recognized as equally invidious as race bigotry.

Now with due respect to the economists, particularly those who follow me today, I respectfully submit that economic theories of how wages are established and the alleged difficulties of comparing relative skill and effort required by different jobs and the cost of eliminating discrimination are now quite irrelevant. Such economic theories may have been legitimate concerns when the Civil Rights Act was under consideration by the Congress two decades ago, but such theories are not relevant today after the Federal Government determined that sex-based wage discrimination was inimical to the welfare of the United States and passed a law to eradicate sex discrimination.

I really think that all the emphasis on the economists is totally misplaced at this stage of the game. Once a law has been passed, the effort should be to see how to comply with that law, and to the extent the economists want to present ideals as to how we can implement the law and how we can do a more successful job evaluation to measure the extent of discrimination, that is relevant, but not the basic issue of whether we can deal with sex-based wage discrimination as a legal proposition.

EEOC has joined the Justice and Labor Departments and the Civil Rights Commission in what appears to be a clear coverup of the Reagan administration's failure to enforce our laws against discrimination in compensation. Basically EEOC has had a long sleep and it's time for it to wake up.

In September 1982, when called upon to explain the Commission's failure to act upon sex-based wage discrimination charges, Chairman Thomas testified that wage discrimination was, in his words, "a high priority of the EEOC." A year and a half later, a couple weeks ago, he testified before the Frank committee that EEOC was still formulating a policy on comparable worth. The EEOC comparable worth task force was established only after EEOC received notice of the Frank hearings. The committee did not meet until after his first scheduled appearance, which he postponed, before the Frank committee.

Now clearly EEOC is playing what must be viewed as a shell game. Testimony of its chairman and general counsel before the Frank committee show the need for truth in advertising. EEOC has refused for 3 years to follow its own procedure established in August 1981 for the investigation of sex-based wage discrimination charges. It has relabeled the charges "comparable worth." And now it asserts that no sex-based wage discrimination charges exist; there are none before that Commission—or so it claims.

That claim is distorted and I think has to be knowingly inaccurate. Denying that any pending charges fall under the *Gunther* umbrella will not make them go away. In their testimony before the Frank hearings, Messrs. Thomas and Slate referred to the constructive role played by the Commission in the handling of sex-based wage discrimination cases in *IUE* v. *Westinghouse, Gunther* and other pre-*Gunther* cases.

I agree that the pre-Reagan Commission, which they really were referring to, is entitled to such credit. Unfortunately, they failed to explain why this commendable progress came to a screeching halt under the present Commission. One would have expected that the Supreme Court's *Gunther* decision would have encouraged the increased filing of *Gunther* and *IUE* type charges. It is not credible to believe that the victory in *Gunther* caused a cessation of those charges. We must ask also what happened to the pre-*Gunther* sex-based wage discrimination charges that the Chairman of the EEOC stated "were sitting" in his words in the Commission files? Apparently, they were also relabeled and repackaged as a comparable-worth charge.

Those charges are pending and I think it requires looking—we can't sweep this under the rug—looking at why EEOC has refused to investigate and act upon those charges. The Chair of the Commission stated that *AFSCME* v. *State of Washington* is a straight *Gunther* case. Why then did they not participate in the case? That case was personally discussed during a meeting with the Chair and his staff, in a meeting with the representatives of the National Committee on Pay Equity, while it was pending before the lawsuit was filed. It was also discussed at a small conference at Williamsburg attended by the Assistant Attorney General for Civil Rights, the Solicitor of the Labor Department and the Director of OFCCP, the Chair, Vice Chair and Acting General Counsel of EEOC and their top staffs on October 14 and 15, 1982, a few months after the lawsuit was filed. Each of those agency representatives was adamant in their view that the *Washington State* case did not come under the *Gunther* umbrella and that it would have no effect on future cases.

It is clear that the decision not to participate in *Washington State* resulted from the philosophy and lack of concern for sex-based wage discrimination by the Reagan appointees, and that it was not until after AFSCME was decided that anyone concluded that it was "straight Gunther."

Because the Commission may not reveal the identity of charging parties, I thought I would list for you some charges that I'm personally familiar with as counsel or former counsel in those cases.

AFSCME has filed charges identical or similar to those filed against Washington State against the States of Connecticut, Hawaii, and Wisconsin. A lawsuit is pending against Connecticut. It has filed charges against the cities of Chicago, New York, Los Angeles, and Philadelphia, Nassau County, NY; Reading, PA; Rockford, IL; and others.

EEOC has also issued a decision against Michigan Bell. In that decision it found that Michigan Bell had engaged in sex-based wage discrimination. A private lawsuit has been brought by the individual charging parties and it's scheduled to go to trial this year. Although EEOC issued such a decision, it has apparently chosen not to participate in the lawsuit in support of its own decision made by the pre-Reagan Commission. It does not appear to include the case in its inventory.

A national charge was also filed against Westinghouse Corp. in 1973 by the International Union of Electronics Workers, IUE, on behalf of all employees in all predominantly female jobs in all Westinghouse plants represented by IUE. Other charges by IUE against at least six individual Westinghouse plants have been successfully litigated or settled, including the landmark case of *IUE* v. *Westinghouse* which was a companion case to *Gunther.*

The national charge is based on the same company job evaluation and other facts which resulted in substantial benefits for the victims of discrimination in these six Westinghouse plants. But the EEOC has apparently discarded this charge from its inventory and has made no effort to end the wage discrimination in the remainder of the Westinghouse plants which, as I said, are identical to those where relief was obtained by private parties.

In our National Capital's backyard, wage discrimination charges have been filed against Fairfax County, VA, on behalf of county librarians, a predominantly female occupation. As in Washington State, they received and they are required to have a master's degree in library science, but receive less pay than male-dominated professions requiring only a bachelor's degree.

Nor has the EEOC chosen to do anything about wage discrimination charges filed by the American Nurses Association against the State of Illinois. The ANA plans to file a lawsuit in the near future.

With the exception of the 1975 finding in the Michigan Bell case, the EEOC has failed to act on these charges, has ignored its own investigative guidelines and has labeled everything "comparable worth," basically to avoid its responsibility to enforce the law.

It states that of 266 comparable worth charges pending, 26 cases are involved. Each of the 15 cases that I've just mentioned—the AFSCME charges, Michigan Bell, Westinghouse, and Fairfax County and the nurses in Illinois—involve multiple charges and total approximately 160 charges. Most of them do not appear to be included in EEOC's inventory.

We have previously advised the Commission of the existence of all of them and have urged them to investigate. We would urge this committee or the appropriate congressional committee to request EEOC to provide a status report on each of the 266 charges they can find and the additional cases that I've mentioned here. I think such a report should include the date the Commission began and completed each of these investigations, if it did commence them, together with its analysis as to whether the facts in each case support a claim under Gunther.

Finally, I think an independent pilot study such as that which the Chair has introduced and that Senator Evans has introduced is essential to determine whether wages paid to Federal employees in predominantly female occupations are discriminatory and in violation of title VII.

Many public and private employers model their wage practices on the Federal Government. Investigation of wage discrimination in the Federal sector would be invaluable in the drive to eradicate wage discrimination throughout this Nation.

A pilot study does not even require new legislation, although if legislation is the way to go, fine. But any appropriate congressional committee could authorize a study by an independent consultant.

I believe that a pilot study will demonstrate congressional willingness to put its own house in order and to move beyond rhetoric to action.

Thank you very much.

[The prepared statement of Mr. Newman, together with additional material referred to, follows:]

PREPARED STATEMENT OF WINN NEWMAN

I. Introduction

My recent testimony at hearings held before the Manpower and Housing Subcommittee of the Committee on Government Operations, chaired by Congressman Barney Frank (hereinafter, "Frank hearings") on February 29, 1984 is incorporated by reference.

II. The Law is Clear: Sex and race based wage discrimination is illegal.

A. "Comparable worth" is not the issue.
Discrimination is the issue.

B. Title VII of the Civil Rights Act of 1964 prohibits discrimination in compensation on the basis of sex and race. Title VII does not refer to, discuss or even contain the words "comparable worth". "Comparable worth" and "pay equity" are popular, not legal, terms.

C. "Comparable worth" is a red herring now being used to avoid the issue of sex-based wage discrimination.

D. Title VII and *Gunther* prohibit an employer from paying its women and minority employees a lower wage for the work they perform because of their sex or race.

E. *AFSCME v. State of Washington* put meat on the *Gunther* skeleton -- demonstrated the kind of evidence that will convince a court the disparity in pay between different jobs is discriminatory and in violation of Title VII, because it is based in whole or in part upon sex.

F. The courts have held that the "market" is not a defense. There is no "free market."

G. The courts have held that cost is not a defense. Congress did not place a price tag on the cost of correcting discrimination.

H. Only a bigot would suggest that cost or the market authorizes an employer to engage in race discrimination. Judge Tanner held that sex discrimination is equally invidious and devastating.

I. Telling victims of discrimination to get a better job does not excuse the Department of Justice from enforcing the law.

J. By contending the law should not be enforced because it will allegedly result in bad economics, economic theorists basically become irrelevant. Economic theory regarding the market place and the cost of eliminating discrimination may have been a legitimate concern while the legislation was being considered --- but such theories are not relevant after the Federal Government had determined that sex-based wage discrimination was inimical to the welfare of the United States and passed a law designed to eradicate such discrimination.

III. EEOC Chairman Thomas has joined the Justice and Labor Departments and the Civil Rights Commission in a cover-up of the Reagan administration's failure to enforce our laws against discrimination in compensation.

A. EEOC HAS HAD A LONG SLEEP!

1. In September, 1982, when called upon to explain EEOC's failure to act upon sex-based wage discrimination charges, Chairman Thomas testified that wage discrimination was a "high priority" at EEOC.
2. In February, 1984, Chairman Thomas testified that EEOC was still formulating a policy on "comparable worth."
3. The EEOC "Comparable Worth" Task Force was established only after EEOC received notice of the Frank hearings.
4. The EEOC Task Force on Comparable Worth met for the first time after Mr. Thomas' first scheduled appearance at the Frank hearings.

B. The Reagan Administration through its Justice and Labor Departments, the Civil Rights Commission and EEOC is playing a shell game.

The testimony of EEOC's Chairman and General Counsel before the Frank Committee show the need for "truth in advertising." EEOC has refused for three years to follow its own procedure for the investigation of sex-based wage discrimination charges, relabelled the charges "comparable worth," and now asserts that no sex-based wage discrimination charges are before the Commission. This claim is distorted and knowingly inaccurate. Denying that any pending charges fall under the Gunther umbrella will not make them go away.

1. Chairman Thomas testified that there were 266 wage discrimination charges pending before EEOC, but that they were all "comparable worth" cases, not "Gunther" cases.
2. Thomas admitted that his Commission has been "sitting" on the charges and that the conclusion that they were all "comparable worth" charges was based on a hasty review of the files immediately preceding his testimony.
3. No responsible lawyer could determine without a thorough investigation whether wage disparity results from discrimination and, therefore, comes under the rubric of Gunther.
4. EEOC has failed to follow its own investigative procedures, adopted in August, 1981 by Carter appointees, but renewed every 90 days thereafter by Reagan appointees. This procedure requires "...identifying and processing sex based wage discrimination charges under Title VII..."

5. In his testimony before the Frank Hearings, General Counsel Slate referred to the constructive role played by the Commission in the handling of sex-based wage discrimination cases in IUE v. Westinghouse, Gunther and other pre-Gunther cases, but asserted that no such cases are now pending. One would have expected that the Supreme Court's Gunther decision would have encouraged the increased filing of Gunther and IUE-type charges. The Commission admits that such charges were filed prior to the Gunther decision. Is it credible to believe that the victory in Gunther caused a cessation of such charges? And what happened to the pre-Gunther sex-based wage discrimination charges that were "sitting" in the Commission files?

C. Sex-Based Wage Discrimination Claims are Pending Before the Commission. Why has EEOC Refused to Investigate and Act upon such Charges?

1. Chairman Thomas testified that AFSCME v. State of Washington is "straight Gunther."
2. The Washington State charge was filed in September 1981 and the lawsuit was filed in July, 1982.
3. The Washington State case was personally discussed during a meeting between representatives of the National Committee on Pay Equity and with the Chair and staff of EEOC long before the lawsuit was filed. It was also fully discussed at a small conference attended by the Assistant Attorney General for Civil

Rights, the Solicitor of the Labor Department and the Director of OFCCP, the Chair, Vice Chair and Acting General Counsel of EEOC and their top staffs on October 14 and 15, 1982, a few months after the lawsuit was filed. Each of these agency representatives were adamant in their view that the Washington State case did not come under the Gunther umbrella and that it would have no effect on future cases.

It is clear that the decision not to participate in Gunther resulted from the philosophy and lack of concern for sex-based wage discrimination by the Reagan appointees, and that it was not until after AFSCME was decided that anyone concluded that it was "straight Gunther."

4. Because the Commission may not reveal the identity of charging parties, the following discussion of sex-based wage discrimination cases now pending before the Commission is limited to those for which I personally filed charges as counsel for the charging parties.

(a) AFSCME has filed charges identical or similar to those filed against Washington State, as follows:

Connecticut (lawsuit by AFSCME also pending)
Hawaii
Wisconsin
Chicago

New York City
Nassau County, N.Y.
Los Angeles
Philadelphia
Reading, Pennsylvania School District and
Rockford, Illinois, County Housing Authority.

(b) In 1975 EEOC made a finding of probable cause in Gerlach v. Michigan Bell, a private employer, that "...we conclude that because of their sex, Respondent is paying its female Engineering Layout Clerks less than it pays its male Field Assistants for duties requiring substantially the same effort, skill and responsibility." A private lawsuit brought by the individual charging parties is scheduled to go to trial this year. Although EEOC issued a determination against the company, it has apparently chosen not to participate in this lawsuit, and does not appear to have included the case in its inventory.

(c) A national charge was filed against the Westinghouse Corporation in 1973 by the International Union of Electronics Workers (IUE) on behalf of the employees in all Westinghouse plants represented by IUE. Other charges by IUE against at least six individual Westinghouse plants have been successfully litigated or settled, including the landmark case of IUE v. Westinghouse, a companion case to *Gunther*. The national charge is based on the same company job evaluation and other facts which resulted in successful settlements, but EEOC has apparently discarded this charge from its inventory, and has made no effort to end the wage discrimination in the remainder of the Westinghouse plants.

(d) In our National Capitol's backyard, wage discrimination charges have been filed against Fairfax County, Virginia, on behalf of County librarians, a predominantly female occupation. Librarians are required to have a master's degree in library science, but receive less pay than male dominated professions requiring only a bachelor's degree.

5. With the exception of the 1975 cause finding in *Gerlach*, EEOC HAS NOT ACTED ON ANY OF THESE CHARGES.* It has ignored its own investigative guidelines and labelled everything "comparable worth" to avoid its responsibility to enforce the law.

EEOC states that its 266 pending charges involve 26 cases. Each of the cases mentioned here -- the *AFSCME* charges, *Gerlach*, *Westinghouse* and *Fairfax County* --- involve multiple charges and total approximately 150 charges; most of them do not appear to be included in EEOC's inventory. We have previously advised the Commission of the existence of these charges and urged them to investigate.

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* Nor has EEOC investigated wage discrimination charges filed by the American Nurses Association against the state of Illinois.

We urge the appropriate Congressional Committee to request EEOC to provide a status report on each of the 266 charges and the additional cases mentioned here, including its analysis as to whether the facts in each case support a claim under Gunther.

IV. Federal Employees

An independent pilot study is essential to determine whether wages paid to Federal employees in predominantly female occupations is discriminatory and in violation of Title VII.

A. A pilot study does not require new legislation. Any appropriate Congressional committee could authorize a study by an independent consultant.

B. A pilot study will demonstrate Congressional willingness to put its own house in order and to move beyond rhetoric to action.

C. Many public and private employers model their wage practices on the federal government. Investigation of wage discrimination in the federal sector would be invaluable in the drive to eradicate wage discrimination throughout the nation.

STATEMENT OF WINN NEWMAN
ON BEHALF OF
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
BEFORE THE
MANPOWER & HOUSING SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
February 29, 1984

Introduction

My name is Winn Newman. I am an attorney in private practice specializing in employment discrimination law. I appear here today as Special Counsel for Minority and Women's Rights for the American Federation of State, County and Municipal Employees (AFSCME). I am also General Counsel for the Coalition of Labor Union Women and Americans for Democratic Action. I have previously served as General Counsel for AFSCME and the International Union of Electrical, Radio and Machine Workers (IUE), and - two decades ago - served as Assistant Executive Director of EEOC.

In my testimony today we would first like to discuss the leadership role of AFSCME in the fight to eliminate wage discrimination.

Second, we would emphasize that existing federal laws -- Title VII of the Civil Rights Act of 1964 and Executive Order No. 11246 - expressly prohibit discrimination in compensation on the basis of sex. Race and sex-based wage discrimination are both clearly illegal.

Third, we would note that employers admit that sex-based wage discrimination is rampant throughout the nation but for the most part defend the maintenance of discriminatory wage structures.

Fourth, we will discuss the failure of the Equal Employment Opportunity Commission and other executive agencies to carry out their legal and statutory obligation to enforce the laws passed by Congress.

Finally, we will make certain recommendations for improved enforcement of our laws prohibiting wage discrimination for the consideration of this committee.

I. APSCME's leadership in the fight to eliminate wage discrimination.

AFSCME has truly taken the lead on pay equity. The Washington State case is the culmination of a ten year struggle to remedy sex-based wage discrimination in public employment. This effort began in 1973 -- long before the issue had attracted national attention.

It was at the urging of AFSCME Council 28, representing employees in State service, that the first pay equity job evaluation study was ordered by then Governor Evans. When that study and later studies showed sex-based wage disparities, the union tried repeatedly to get the legislature to appropriate the money necessary to correct the inequities. After the Gunther decision in June of 1981, AFSCME filed EEOC charges and subsequently a lawsuit. AFSCME has filed EEOC charges against other recalcitrant employers who refuse voluntarily to correct discriminatory pay practices.

Obviously, the road to economic justice will be extremely long for AFSCME's 400,000 women members if all claims must wait for the courts to act. Collective bargaining offers the best hope for prompt correction of pay discrimination. In the absence of litigation, it may also allow employers to avoid back pay and to phase in the equity adjustments over several years.

Indeed, thousands of AFSCME-represented workers in traditional women's jobs have already received substantial pay equity adjustments at the bargaining table. In San Jose, California, Spokane, Washington and the State of Minnesota pay equity is being phased in to correct the underpayment of women's jobs identified by job evaluation studies. In St. Paul, Minnesota and the State of New York, AFSCME and the employers have negotiated job evaluation studies. Any disparities uncovered will be dealt with through negotiations. Without doing formal studies, AFSCME affiliates in New York City, Los Angeles and San Mateo County, California have negotiated upgrades for female dominated classifications which both parties have agreed are underpaid.

AFSCME has strongly supported state and local legislative pay equity initiatives. A number of states and localities now have legislatively mandated pay equity studies under way and bills have been proposed in many others this year.

AFSCME will continue its efforts at the bargaining table and in the courts to eliminate wage discrimination.
Vigorous enforcement by the responsible federal agencies is necessary, however, if private enforcement is to be credible and wage discrimination is to be eliminated.

II. The Law

A. Sex-based wage discrimination is illegal - even where the jobs are totally different. This concept is no longer debatable.

Title VII of the Civil Rights Act, as well as Executive Order 11246, expressly prohibit an employer from discriminating in compensation.

Nearly three years ago, the Supreme Court declared that sex-based wage discrimination is illegal even if the jobs being compared are entirely different.[1] The Supreme Court found that if a differential in pay results in whole or in part from sex discrimination, such wage differential is illegal if the skill, effort and responsibility of the different "male" and "female" jobs is equal *or* if the difference in skill, effort and responsibility does not support the amount of the differential. A fair reading of *Gunther* and of the Court's refusal to review the favorable *IUE v. Westinghouse* decision,[2] a companion case which was pending when *Gunther* was being considered and was implicitly approved by the Court, is that the Supreme Court held that sex-based wage discrimination is no less illegal than wage discrimination based on race, national origin or religion.[3]

These Supreme Court decisions banning discrimination in compensation in no way require that the comparison be restricted to similar or comparable jobs. In *IUE v. Westinghouse*, the jobs being compared were not similar, e.g., female assembly

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1/ *County of Washington v. Gunther*, 101 S.Ct. 2242(1981).

2/ 631 F.2d 1094(3d Cir. 1980), *cert.den.*, 452 U.S. 967(1981)

3/ "(The Supreme) Court...refer(s) to discrimination on the basis of race, religion, sex or national origin as they are equally nefarious and equally prohibited." *IUE v. Westinghouse*, 631 F.2d 1094, 1100(3d Cir. 1980), *cert.den.* 452 U.S. 967. See also *Los Angeles Department of Water & Power v. Manhart*, 435 U.S. 702,709(1978); *Dothard v. Rawlinson*, 433 U.S. 321, 329(1977); *AFSCME v. State of Washington*, 33 FEP Cases 808 at 825 n.22 (W.D.Wash. 1983).

line workers, inspectors and quality control workers were compared with male janitors, shipping clerks, manual laborers and other dissimilar jobs.

Although the Supreme Court in Gunther made clear that wage bias is illegal, it did not spell out the kind of evidence that must be presented in other cases.[4/] The recent holding in AFSCME v. State of Washington showed in detail the kind of evidence that would generally result in a court finding of discrimination. The AFSCME case put meat on the Gunther skeleton. As will be shown below, the evidence relied upon by the AFSCME court, which resulted in a finding that the evidence of discrimination in compensation was "overwhelming," is typical of the practices of virtually every employer, private and public, including the federal government. Such evidence included:

- Statistical evidence that there is a statistically significant inverse correlation between sex and salary. For every 1% increase in the female population of a classification the monthly salary decreased by $4.51 for jobs that the employer evaluated to be worth the same. A 100% female job is paid, on average, $5,400 a year less than a 100% male job of equivalent value. The chances of such a relationship occurring by chance is less than 1 in 10,000.

- Deliberate occupational segregation on the basis of sex. The employer placed classified ads in the "male only" and "female only" columns until the newspapers stopped accepting such ads because it violated Title VII. The employer also used classification specifications which indicated a preference for male or female employees.

- Disparities in wages between closely related but segregated jobs such as Barber and Beautician, Institution Counselor and Classification Counselor, House Parent and Group Life Counselor, and Duplicating

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[4/] This is standard practice for the Court, which usually restricts its rulings to the facts of a particular case.

Service Supervisor and Data Processing Supervisor. The predominantly male jobs in each set were consistently paid more than the predominantly female jobs requiring similar duties.

- Disparities in salaries between predominantly male and predominantly female entry level jobs which require the same qualifications. Predominantly male entry level jobs requiring no high school were paid an average of 10% more than predominantly female entry level jobs requiring no high school. Predominantly male entry level jobs requiring a high school degree are paid an average of 22% more than predominantly female entry level jobs requiring high school. Predominantly male entry level jobs requiring one year of business school are paid an average of 19% more than predominantly female entry level jobs requiring one year of college. Predominantly male entry level jobs requiring two years of college are paid an average of 13% more than predominantly female entry level jobs.

- A series of job evaluation studies performed by the state which show a 20% disparity between predominantly male and predominantly female jobs which require an equivalent composite of skill, effort, responsibility and working conditions. The disparity increased by 1983. The state updated the studies but took no action to correct the discrimination. On the eve of trial, the state passed a bill calling for a 10 year phase-in of comparable worth. The judge did not make an independent determination of job worth.

- Admissions by top officials of discriminatory practices. Successive Governors admitted that the job evaluation studies performed by the state showed discrimination in compensation. Reports by the personnel Boards, the Governor's Affirmative Action Committee and others documented discrimination in a variety of personnel practices.

- Discrimination in the administration of the state's compensation system. The Campus Police Assistant position, which had to be filled by a woman, was indexed to the clerical benchmark instead of the security benchmark, a male classification. Reclassification actions favored male employees over female employees.

Judge Tanner found on the basis of this and similar evidence that there was overwhelming evidence of "historical discrimination against women in employment in the State of Washington, and that discrimination has been, and is, manifested by direct, overt and institutionalized discrimination." He found the State had acted in bad faith and had violated Title VII by engaging in both disparate treatment (intentional discrimination) and disparate impact.

Between the time the Supreme Court decided Gunther and the AFSCME decision, there have been other decisions consistent with the AFSCME ruling. AFSCME members recently won $15 million in back pay in a race-based wage discrimination suit. Liberles, AFSCME v. County of Cook, 31 FEP Cases 1537, 1549(7th Cir. 1983). The Court found that the County had discriminated in compensation on the basis of race by paying black Case Aide Trainees and Case Aides less than white Caseworkers. The Court found that "...a disproportionate number of black workers were paid less than white workers who performed the same work," and ordered back pay and prospective relief.[5] .

In a case tried with evidence similar to that used in AFSCME v. State of Washington, the trial court found that the employer had segregated its employees on the basis of sex and paid women less for jobs requiring similar work. Taylor v. Charley Brothers, 25 FEP Cases 602(WD Pa. 1981). The trial court made detailed findings of fact regarding discriminatory intent, including deliberate segregation on the basis of sex, discriminatory probation procedures, discrimination in the creation and assignment of new classifications, sexist comments, the similarity in duties between the male and female jobs, the history and consistency of the wage differentials between male and female jobs, and the failure of the employer to undertake any evaluation of the jobs.[6/]

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[5] Such a case could not be brought under the Equal Py Act (EPA) because the EPA does not cover discrimination on the basis of race.

In *Melani v. Board of Higher Education* 31 FEP Cases 648 (S.D.N.Y. 1983) the court found intentional discrimination in compensation based solely on a statistical analysis of the salaries of male and female instructional staff. The university was unable to rebut the employee's statistics or otherwise explain the discriminatory pattern.[7/]

The consistent holding of these cases is that a *pattern* of disparities in wages between male and female jobs is highly persuasive evidence of discriminatory intent. A disparity between a single male and a single female job may on occasion be explained away for idiosyncratic reasons. But *a consistent pattern of disparities is difficult to explain on any ground other than discrimination*. By analogy, if Jack is selected instead of Jill for a promotion, in the absence of any circumstantial evidence of discrimination it is difficult to infer discriminatory intent. But if the Jims, Johns, Joes and Jacks are regularly selected

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6/ The original decision in the *Charley Brothers* case was issued just before the Supreme Court's *Gunther* decision was rendered. A motion for reconsideration by Defendants filed after *Gunther* was denied. *Charley Brothers* was settled for approximately $1 million in back pay after an appeal was filed but before a decision was issued.

7/ See also *Heagney v. University of Washington*, 642 F.2d 1157(9th Cir. 1981); *CArpenter v. Stephen F. Austin University*, 706 F.2d 608(5th Cir. 1983); *Wilkins v. University of Houston*, 654 F.2d 388(5th Cir. 1981), *vacated & remanded* 103 S.Ct. 34, affd on remand, 659 F.2d 134(5th Cir. 1983); and *Lanegan-Grimm v. Library Ass'n of Portland*, 560 F.Supp. 486(D.Ore. 1983).

instead of the Janes, Joans, Joanns and Jills, the inference of discrimination is unavoidable.

B. Occupational segregation and wage discrimination go hand-in-glove

In the AFSCME case, the court relied heavily on the evidence showing that the State had deliberately segregated its work force, e.g., placing classified ads in the "male" or "female" column, job descriptions that limited a job to one sex; state "protective" laws which prohibited women from doing certain work; and references in employer records to "pigeonholing" female employees, to average earnings for "men's" and "women's" jobs, to polls of supervisory and other employees to ascertain their reaction to opening "male" jobs to female employees, etc.

There is a symbiotic relationship between occupational segregation and wage discrimination. More importantly, occupational segregation practiced by nearly all employers leads to and is evidence of wage discrimination.

The initial assignment and subsequent wage practices derive from a common set of biases about women and minority workers. The employer who assigns women, for example, only to assembly line jobs because it believes they are not suited for heavier jobs, also inevitably believes that the jobs performed by women are of less value than the "physical" jobs performed by men. Put another way, the same employer who believes that women should not be placed in jobs of importance and responsibility, because of the employer's conception of the role of women in our society or of the "innate" abilities of women, is almost certain to believe that the jobs women are permitted to perform have less value than the jobs performed by men. (E.g, zoo keepers who take care of animals typically are higher paid than female employees who engage in child care.) A prestigious study by the National Academy of Sciences and commissioned by EEOC concluded, "...the more an occupation is dominated by women the less it pays." 8/

Virtually every employer that hired women prior to the passage of the Civil Rights Act deliberately sex-segregated its work force, and paid its female employees a discriminatory wage.9/ With few exceptions these employers are probably paying an illegal wage today, in violation of the Civil Rights Act and E.O. 11246.

The Supreme Court told us three decades ago that segregation and equality cannot coexist. In its landmark school segregation case, Brown v. Board of Education, a unanimous Court held that "(s)eparate educational facilities are inherently unequal," and that racially separate educational facilities result in inferior education because "separating the races is usually interpreted as denoting the inferiority of the Negro group.10/

8/ Treiman and Hartman, Women, Work and Wages: Equal Pay for Jobs of Equal Value, National Academy of Sciences, National Academy Press (Wash. D.C. 1981) at 28.

9/ The various State "protective laws" required some degree of segregation; those laws did not, however, require paying women a discriminatory wage. Although most of these laws have been superseded by Title VII and are no longer in effect, the continuing effects of such discrimination constitute evidence of discrimination today.

10/ 347 U.S. 483, 494, 495 (1954).

The Supreme Court's holding that segregation is "inherently unequal" applies with equal force to race and sex segregation in the work place, i.e., a racially or sexually separate job structure inherently results in inferior wages because such structure "denotes the inferiority of the (female) group." 11/ When an employer has segregated the work force, wage discrimination invariably follows.

C. Failure to pay equal pay for equal work is only one limited form of wage discrimination

Although the Gunther case clearly held that Title VII was broader than the Equal Pay Act, some apologists for wage discrimination continue to profess commitment to the goal of equal pay for equal work but oppose efforts to eliminate other forms of wage discrimination. It is sheer hypocrisy to oppose one type of discrimination and support another. As the Supreme Court held in Gunther, the limitation of the Title VII to equal pay cases:

> "means that a woman who is discriminatorily underpaid could obtain no relief - no matter how egregious the discrimination might be - unless her employer also employed a man in an equal job in the same establishment, at a higher rate of pay. Thus, if an employer hired a woman for a unique position in the company and then admitted that her salary would have been higher had she been male, the woman would be unable to obtain legal redress under petitioner's interpretation. Similarly, if an employer used a transparently sex-biased system for wage determination, women holding jobs not equal to those held by men would be denied the right to prove that the system is a pretext for discrimination."

452 U.S. at 178-179.

11/ For a more complete discussion of this issue, see "Separate But Equal" - Job Segregation and Pay Equity in the Wake of Gunther, Newman and Vonhof, University of Illinois Law Review, November, 1981, copy of which is appended as Att. A.

The Equal Pay Act applies generally to cases where men and women are doing the same job and would not apply to segregated jobs. Those who argue that the law applies only to equal pay for equal work indirectly encourage employers to sex-segregate the work force, thereby permitting discrimination on the erroneous theory that neither the EPA not Title VII applies. The most substantial component of the wage gap is attributable to discrimination in compensation for the work women now perform.

Even opponents of the elimination of wage discrimination admit that one half of the total wage gap is attributable to discrimination. Dr. June O'Neill, a vigorous opponent of efforts to eliminate wage discrimination, testified on behalf of the unsuccessful Defendants in the AFSCME case. Dr. O'Neill testified that there is an approximate 40% wage gap between predominantly female jobs and predominantly male jobs. Approximately one-half of that disparity, according to Dr. O'Neill, can be attributed to non-discriminatory factors such as education, training, experience, etc. She admitted that the other half of the wage gap cannot be explained by any factor other than sex. Ironically, Dr. O'Neill's testimony is remarkably consistent with the wage gap identified in the State's job evaluation studies. Dr. O'Neill's testimony is also consistent with that of Dr. George Hildebrand, witness for Defendants, and Dr. F. Ray Marshall, former Secretary of Labor, witness for AFSCME.

D. "Comparable worth" is not the issue.

Title VII prohibits discrimination in compensation. It does not refer anywhere to "comparable worth." "Comparable worth" and "pay equity" are popular terms, not legal ones. The Supreme Court in *Gunther* found that it was not necessary to consider "comparable worth" in order to resolve questions relating to sex-based wage discrimination. It is, therefore, clear that *all cases involving wage discrimination should be resolved by EEOC on the basis of the statute, with no reference to "comparable worth."*

The ultimate issue in a wage discrimination case is whether sex or race was a factor in wage setting. A comparison of the duties of different jobs *with the same employer* is, of course, relevant evidence of discrimination. In the absence of discrimination, one would expect jobs which require a greater composite of skill, effort, responsibility and working conditions to be paid more. See pp.27-29 *infra*In Washington State, job evaluation studies found that there were two separate salary practice lines -- one male and one female; male jobs which required greater skill, effort and responsibility were paid more than other male jobs and female jobs that required greater skill, effort and responsibility were paid more than other female jobs -- but on a two track system. The simple establishment of a unirail wage system for all employees will end wage discrimination.

For purposes of Title VII, it really doesn't matter what a job is "worth," or what an employer chooses to pay. What does matter is that an employer may not discriminate against its female employees who perform work of equal skill, effort and responsibility by paying them less than it chooses to pay the occupants of traditional male jobs.

"Comparable worth" has become a red herring to obfuscate the real issue of discrimination and the clear holding of *Gunther*. To avoid the force of *Gunther*, EEOC appears to have labelled every wage discrimination case "comparable worth", and therefore outside the holding in Gunther. In fact, any wage discrimination case which is based in part on a comparison of job duties may be tried on the basis of disparate treatment or disparate impact, or both, depending upon the facts.

Sex bigots generally refuse to talk about discrimination. They prefer to use the "comparable worth" tag to create the erroneous impression that all employers would be required to pay the same wage rates and that this would bring about national wage controls. But the Title VII yardstick measures discrimination on the basis of how an employer treats its female and male employees. Any comparison of job duties or wage rates in support of a claim of wage discrimination must be based on a comparison of the wages an employer pays the occupants of its male and female jobs.

I suggest that we put aside the popular terms "comparable worth" and "pay equity" for today and concentrate on the requirements of the law.

III. The Executive Branch has failed and refused to enforce the civil rights law.

The Equal Employment Opportunity Commission, the Department of Justice and other executive agencies are obligated to enforce the law, not to substitute their political judgment or ideological philosophy for the decisions of Congress and the Supreme Court. A deliberate refusal to enforce the laws constitutes malfeasance in office and warrants appropriate action.

President Reagan did not nominate any EEOC Commissioners until after August, 1981. Until that time, EEOC had followed a consistent pattern, interpreting Title VII's prohibition against discrimination in compensation to incorporate more than the Equal Pay Act. A brief chronology makes this readily apparent:

1. Starting in 1966, EEOC issued Decisions (findings of "cause") applicable to both race and sex-based wage discrimination where jobs were different. EEOC made at least 10 "probable cause" findings in wage discrimination cases between 1966 and 1970, e.g., _Planters Manufacturing Co._ in 1966 (disparity between black foundry workers and white production workers.) The joint brief of EEOC and the Justice Department in the _Westinghouse_ case (attachment B pp. 27-28) points to this record with pride:

> ...the Commission issued a number of decisions which showed that it did not deem a finding of "equal work" necessary to state a claim of wage discrimination based on sex. Case No. 66-5762 (decided June 20, 1968), 1973 CCH EEOC Decisions §6001, n.22; Decision No. 70-112 (Sept. 5, 1969), 1973 CCH EEOC Decisions §6108; Decision No. 71-2629 (June 25, 1971), 1973 CCH EEOC Decisions §6300. In these cases the Commission found lower pay scales for jobs held predominantly by females in sex-segregated workforces to be discriminatory. Thus _it has been the Commission's consistent position that the depression of wages for females in sex-segregated jobs because such jobs are occupied by females, constitutes a violation of Title VII_ (emphasis added)

2. Congress reaffirmed its intent to broadly prohibit discrimination in employment on the basis of sex and race in enacting the 1972 amendments to Title VII:

> Discrimination against women is no less serious than other forms of prohibited employment practices and is to be accorded the same degree of social concern given to any type of unlawful discrimination.

H.R.Rep. No. 92-238, 92d Cong., 1st Sess. 5(1971). See also S.Rep. no. 92-415, 92d Cong., 1st Sess. 7-8(1971).

3. Regulations issued by EEOC in 1972 were consistent with congressional intent to apply the same standards to sex-based wage

discrimination claims as to race based wage discrimination claims unfettered by the equal work standard. 29 CFR 1604.8(a) provided that:

> The employee coverage of the prohibitions against discrimination based on sex contained in Title VII is *coextensive with that of the other prohibitions contained in Title VII...*

4. In 1979 and 1980 EEOC played a leading role in *Gunther* and *IUE v. Westinghouse*. After the district court initially dismissed the *Westinghouse* case, EEOC Chair Norton, to show the importance of this issue, assigned the then EEOC General Counsel, Issie Jenkins, to urge the district court to permit a special and expedited appeal to the Court of Appeals. Norton then requested Jenkins' successor, General Counsel Leroy Clark, to argue the case in the Court of Appeals. The Justice Department and EEOC played major roles in both the Court of Appeals and the Supreme Court in rebutting defenses made by employers --- defenses which were designed to permit the perpetuation of sex-based wage discrimination.[12]

5. Within two months after the Supreme Court issued *Gunther*, EEOC, in August 1981, had adopted a procedure to provide "Interim Guidance to Field Offices on Identifying and Processing Sex-based Wage Discrimination Charges under Title VII and the EPA." The

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[12] Shortly after the *Gunther* decision was rendered, the National Academy of Sciences published a study earlier commissioned by EEOC on wage discrimination and job evaluation. The study concluded that "...jobs held mainly by women and minorities are paid less *because* they are held mainly by women and minorities." The study concluded that, "In our judgment job evaluation plans provide measures of job worth that...may be used to discover and reduce wage discrimination..." Treiman & Hartman, Women, Work & Wages: Equal Pay for Jobs of Equal Value, National Academy of Sciences, National Academy Press (Wash.D.C. 1981) at 93, 95.

stated purpose was to provide "interim guidance in processing...claims of sex-based wage discrimination in light of the recent Supreme Court decision in County of Washington v. Gunther."[13] The EEOC memorandum set forth comprehensive procedures for "investigating" and "evaluating sex-based wage claims" and also provided that "counseling of potential charging parties should be expanded to reflect the scope of Gunther."

The memorandum also states:

> ...Title VII is not limited by the equal work standard found in the Equal Pay Act.
>
> ...the decision brings sex-based wage discrimination claims into conformity...with the Commission's consistently held position in this regard when the charge is based on race or national origin.
>
> Gunther now makes it clear that Title VII is also applicable to sex-based wage claims other than those involving equal pay for equal work.
>
> The female telephone operator...could compare herself...to a male who works in an entirely different job classification (i.e., a male elevator operator).
>
> ...Title VII principles apply to the processing and investigating of wage discrimination charges regardless of whether they are based on national origin, race, sex, color, or religion.

It should be noted that this earlier Commission memorandum was addressed to the "Processing of Sex Based Wage Discrimination Charges" and does not refer to the processing of "comparable worth" charges.

President Reagan's appointees to EEOC lost no time in expressing their opposition to correcting sex-based wage discrimination.[14] Their strategy was simple: call everything "comparable worth" and claim that the Supreme Court did not approve a "comparable worth" theory in *Gunther*. See pp. 13-15 *supra*.It came as no surprise, therefore, that the Commission dragged its feet, failed to carry out its mandate to enforce the law's prohibition against wage discrimination and made clear to employers they had nothing to fear from the Commission.

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[13] The memorandum of August 25, 1981, was unanimously adopted by the Commission which then included: J. Clay Smith, Acting Chair; Daniel E. Leach, Vice Chair and Armando M. Rodriguez. A copy of the memorandum is appended as Att. C.

Nevertheless, the Reagan Commission has renewed the guidance procedure each 90 days since its adoption. On the other hand, in our discussions with the Chairman and EEOC Commissioners, as well as the regional office staffs, it is clear that the procedure has been totally ignored; on several occasions, we have sent the procedures to EEOC staff because they were totally unaware of the procedure. Indeed, in 1982, at the time of the hearings before three subcommittees of the House Post Office and Civil Service Committee, the Commission was on the verge of formally adopting a new policy statement which did not even acknowledge the existence of the present procedural regulation and which would have required the dismissal without investigation of all pending sex-based wage discrimination charges.[15] At the present time, 18 months later, the Commission is still talking about adopting a "comparable worth" guideline, refuses to investigate charges of sex-based wage discrimination and continues to ignore its investigatory procedure.

14/ The first Reagan-appointed EEOC General Counsel Michael Connolly announced that he believes in the "market" concept and that he would not bring "comparable worth" lawsuits because the remedy would result in "severe economic hardship" for the discriminators. The present Chair and Vice Chair of the Commission expressed similar unfavorable views and indicted their lack of support for "comparable worth."

15/ See next page.

EEOC and Justice are actively seeking to raise from the dead legal issues that the Supreme Court put to rest in the *Gunther* case.[16] For example, in commenting upon the *AFSCME v. Washington State* case, one Justice Department official queried, "How do you compare the poet and the plumber?" (N.Y. Times Jan. 22, 1984).17/ In *Gunther*, the Supreme Court agreed with the position of EEOC and the Justice Department that Title VII was *not* limited to cases involving equal pay for equal work. The joint EEOC and Justice Department brief argued then that:

> When Congress amended Title VII in 1972, it confirmed the intent of Title VII to broadly proscribe all forms of discrimination in compensation, against not merely those that are most blatant...The complaint alleged that women were paid less because they were women. That states a cause of action under Title VII."

Attachment B at 9 & 28.

15/ After being criticized at the hearings, the new policy was not adopted. See testimony of Newman, Pay Equity: Equal Pay for Work of Comparable Value, Joint Hearings Before the Subcommittees on Human Resources, Civil Service & Compensation & Employee Benefits of the Committee on Post Office & Civil Service, House of Representatives, 97th Cong., 2d Sess., September 16,21,30 and December 2, 1982, Part I, hereinafter "hearings."

16/ A favorite technique is to cite cases decided before the Supreme Court's decision in *Gunther*. Citing pre-*Gunther* cases is like citing *Plessy v. Ferguson*, 163 U.S. 537(1895) after *Brown v. Board of Education*, §47 U.S. 483(1954)(separate but equal is inherently unequal). Pre-*Gunther* cases are only instructive insofar as they are consistent with *Gunther*. Even before *Gunther*, there were successful wage discrimination claims, see, e.g., *Kyriazi v. Western Electric*, 461 F.Supp. 894(DNJ 1978); *Laffey v. Northwest Airlines*, 567 F.2d 429(D.C.Cir. 1976) and 642 F.2d 578(D.C.Cir. 1980).

17/ As discussed at pp. 13-15 *supra*, proof of wage discrimination claims involves comparison of male and female jobs with the *same* employer only. We know of few employers who employ both poets and plumbers.

Similarly, Assistant Attorney General for Civil Rights William Bradford Reynolds,[18] without having read the opinion, stated that, "If the women with low paying jobs had an equal opportunity to work at the jobs with higher salaries but never took the opportunity, where's the discrimination?" (N.Y. Times, January 22, 1984). The best response for Mr. Reynolds is to be found in the Justice Department brief filed by his predecessor with the Supreme Court in Gunther:

> Petitioners suggest...that the purposes of Title VII will be satisfied if women are protected only against discrimination in transfers and promotions. But such opportunities may not always exist and some women, although qualified for the underpaid jobs that they presently hold, may not have the skills necessary to secure other employment. That women may theoretically be able to move to jobs in which sex-based compensation practices are not present is irrelevant inasmuch as (the Act) prohibits discrimination not only in promotions and transfers, but also in compensation.

Brief for the United States and the Equal Employment Opportunity Commission as amica curiae in County of Washington v. Gunther, at pp. 10-11, n.5.

We assume that Mr. Reynolds was aware of Gunther and of the role his agency had played in that decision. In view of this direct and blatant contradiction of the former Solicitor General, Attorney General and EEOC General Counsel, serious questions can and should be raised with respect to this administration's commitment to enforcing existing civil rights laws.

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[18] Mr. Reynolds also stated that, "I have absolutely no doubt his decision is wrong." (N.Y. Times, Jan. 22, 1984) The transcript of the trial is not even available yet and Mr. Reynolds made this statement without review of any part of the record. Reynolds has admitted he was accurately quoted.

EEOC Chair Clarence Thomas correctly analyzes AFSCME v. State of Washington as a "straight Gunther" case. "Who am I to challenge the Supreme Court?" Thomas has asked rhetorically.[19/] While the Chair correctly recognized, unlike Mr. Reynolds, that he should not question the Supreme Court (and his Democratic and Republican predecessors at EEOC), he neglected to ask "Why did EEOC not even investigate the Washington State charges? Why has EEOC not investigated the duplicative charges filed against other states, counties, cities and school boards?"

Mr. Thomas expressed similar worthy sentiments in congressional testimony a year and a half ago. He agreed that comparable worth is an issue of discrimination[20/] and testified that:

> The Commission does place high priority on comparable worth issues.21/..The members of the Commission have shown no hesitancy to use class action litigation as an enforcement litigation." 22/
>
> ...You have my commitment that we will pursue very vigorously the inequities and discrimination in the federal work force.23/

Unfortunately, despite Mr. Thomas' testimony a year and a half ago, and his favorable comments about the AFSCME case, EEOC has taken no action on wage discrimination issues. According to EEOC's submissions to this Committee in preparation for these hearings, there are currently 254 charges alleging some form of

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19/ 1984 Daily Labor Report, 25, AA:7.

20/ Hearings at 401.

21/ Hearings at 377.

22/ Hearings at 402.

23/ Id., p. 403.

wage discrimination pending at EEOC right now.[24/] EEOC has not brought a single wage discrimination case to trial since the Gunther decision was rendered three years ago, nor has it investigated and referred any public employment cases to the Justice Department.

An obvious candidate for EEOC litigation is the national charge filed against Westinghouse 10 years ago. Charges against six individual Westinghouse plants have been settled, including the case of IUE v. Westinghouse which was before the Supreme Court with Gunther. The same discriminatory wage rates are in effect in other Westinghouse plants across the country. Settlements of wage discrimination cases in the electrical industry have reaped tens of millions of dollars for the victims of discrimination. Yet EEOC has taken no action on the pending national charge against Westinghouse. This charge has been brought to the attention of the current Chair and his staff on at least two occasions.[25/]

Similarly, the Justice Department declined to testify today because it had "had no occasion" in the past three years to initiate a wage discrimination case. AFSCME alone has had at least half a dozen wage discrimination charges pending against public employers in the last three years, including the Washington State case which would have provided an "occasion" for Justice

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[24/] The EEOC statistics underestimate the number of charges pending. We understand that the estimate does not include AFSCME charges against Connecticut, Hawaii, Wisconsin, Los Angeles, Philadelphia, Chicago, University of California and New York City.

[25/] The Commission has shown a similar lack of interest in the case of Gerlach v. Michigan Bell, which will probably go to trial this year on an amended complaint without benefit of EEOC participation.

Department litigation.

The Labor Department under the current administration is also retreating from prior government policy. Former Secretary Marshall recognized the need for vigorous public enforcement of civil rights laws on federal contract programs, as well as the need to support and complement private initiatives. Former Assistant Secretary of Labor Don Elisburg, who had overall authority for the Office of Federal Contract Compliance Programs, stated that the Department of Labor would require equal compensation for women's and men's jobs whenever the jobs "which may be different in content...required the same skill, effort and responsibility." As stated by Elisburg, "The concept sounds so simple, one can only wonder what has taken it so long to catch hold." 26/

26/ Daily Labor Report, No. 230, November 29, 1978

But here, too, the Reagan administration's Labor Department sold out the victims of sex-based wage discrimination. In 1978, the Department of Labor brought charges against Kerr Glass Manufacturing Corporation, based on the first Gunther-type complaint of sex-based wage bias filed by a federal agency. The complaint alleged that Kerr had skewed the evaluation of its male and female jobs in order to maintain sex discriminatory wage rates (e.g., under the Kerr plan maximum physical effort was allotted twice as many points as maximum mental effort.)

Despite a 122 day trial in 1979, Reagan's Department of Labor settled the case on August 13, 1982, by washing out the wage discrimination claims and all related back pay, and agreeing that the Department would not take any action based on the Kerr job evaluation plan (or changes made therein) until at least 1985.[27/] Since most of the remedial aspects of the settlement focused on allowing women to compete for predominantly male jobs, it appears the administration is following the Justice Department line of telling women in underpaid jobs that they should simply "get a man's job," otherwise "where's the discrimination?"

EEOC, the Justice Department and OFCCP all have the authority to investigate and litigate suspected wage discrimination claims even without a charge by a union or employee. We know as a fact that the Westinghouse pay structure exists throughout that company and the rest of the electrical manufacturing industry. And we know as a fact that the practices

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[27/] Consent Decree, Case No. 77-OFCCP-4, U.S. Department of Labor (August 13, 1982) at 3,5,6,12.

of Washington State exist throughout public employment. Surely there is one case of wage discrimination which even this administration would consider a violation of Title VII.

IV. Bigotry is Not Defensible

Ronald M. Kurtz, President of the the International Personnel Management Association, testified at the congressional hearings held a year and a half ago, that

> As an association of personnel professionals, IPMA recognizes that discriminatory compensation systems continue to exist in the public sector. Numerous studies have documented the pay inequity problem. Our association urges all employers to eliminate discrimination from their compensation systems...
>
> Our association believes that job evaluation systems exist which enable an employer to compare jobs within an organization. IPMA supports the use of well designed job evaluation systems as an effective management tool which will assist in the elimination of discrimination.
>
> Failure to undertake a study of the value of jobs held by men or women also has been held to constitute proof of an employer's intent to discriminate against women by setting their wages at rates lower than the salaries paid to men.

(Citing Taylor v. Charley Brothers Co., 25 FEP Cases 602 (W.D.Pa. 1981)) [28/]

In the face of such an admission of discriminatory wage rates by one of the largest associations of personnel specialists, it is difficult to understand why EEOC cannot find what employers openly admit is wide-spread. Despite these admissions of wage discrimination and judicial findings of such discrimination, defenders of existing wage discrimination, including public officials, continue to pervert the issue, by raising irrelevant issues as a smokescreen for their failure to comply with the law, hardly a defensible position for those who urge "law and order."

[28/] Hearings, p.225, 228-229, 230.

They use four basic excuses: a) "apples and oranges"; b) "market"; c) "cost" and d) "blame the victim."

A. Apples and oranges is not a defense

The apples and oranges argument is that it is not possible to evaluate dissimilar jobs. But this is exactly why job evaluation was developed. As stated by Arbitrator Bertram Gottlieb

> From the very beginning job evaluation plans were developed for the purpose of devising a yardstick for measuring dissimilar jobs: for determining "How much one job is worth compared with other jobs" (Occupational Rating Plan of the Industrial Management Society, IMS, Chicago, 1937). If all jobs were similar there would have been no need for job evaluation plans. 29/

Virtually every large employer uses some method to evaluate the internal relationship of different jobs, based on an objective evaluation of the composite of skill, effort, responsibility and working conditions required by the jobs. 30/

For more than 50 years, employers have been praising job evaluation. Employers themselves upheld the job evaluation concept when it was in their own interest, during passage of the Equal Pay Act (EPA).31/ Consistent with that legislative history, judges have been comparing "apples and oranges" under the

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29/ Testimony of Mr. Gottlieb, who specializes in job evaluation cases, before Carol Bellamy and Andrew Stein, President of the New York City Council and Borough of Manhattan, respectively, on February 7. 1984.

30/ "Almost two-thirds of the adult population in the USA are pay-graded by job evaluation schemes." Job Evaluation, Patterson, Thomas T. (London Business Books)(1972) at p.xi; Paul Katz, "Comparable Worth", Federal Service Labor Relations Review, Spring, 1982, 38,39.

31/ See next page.

EPA for 20 years. Frequently a judge must determine on the basis of job content or job evaluation whether men's and women's jobs are "equal or substantially equal" within the meaning of the EPA. Thus in Thompson v. Sawyer, 678 F.2d 257 (DC Cir. 1982), a case involving the Government Printing Office, a legislative agency whose wages are set by the Joint Committee on Printing, the judge compared the female job of journey bindery worker with that of the male job of bookbinder, and found that the federal government was paying women a discriminatory wage.32/

Male and female jobs can be compared without a formal job evaluation plan, e.g., male barbers v. female beauticians, male liquor store clerks v. female school teachers, male toll collectors v. female medical stenographers, male tree trimmers v. female nurses. Similarly, it does not take an expert evaluator to recognize that discrimination exists where the qualifications for entry level jobs are the same (e.g., high school graduation is the sole requirement), and the rates for the "female" jobs are consistently 20% below the male jobs, as in the AFSCME case.

31/ In Corning Glass Works v. Brennan, 417 U.S. 188(1974), the Court held that the fourth affirmative defense in the Equal Pay Act ("any other factor other than sex") had been added to protect bona fide non-discriminatory job evaluations. See discussion of legislative history in Newman and Vonhof, "Separate but Equal - Job Segregation and Pay Equity in the Wake of Gunther," 2 Univ. of Illinois Law Review(1981, Att. A at 314, N.204.

32/ See Laffey v. Northwest Airlines, 567 F.2d 429(D.C.Cir. 1976), cert. den. 434 U.S. 1086(1978). vacating and remanding in part, affirming in part, 366 F.Supp. 763(D.D.C. 1973) and 374 F.Supp. 1382(D.D.C. 1974). See also Hodgson v. Brookhaven General Hospital, 436 F.2d 719(5th Cir. 1970). ("Nurses" and "Orderlies").

See p. 7 *supra*.[33]

B. *The market is not a defense*. The "market" argument is that wages are established by supply and demand, not discrimination. "We do not discriminate," employers protest. "We just pay the going rate." There are several fallacies in this argument.

First, the market itself is distorted by discrimination. Supply and demand does not work for traditionally female jobs. The well known and long-time shortage of nurses in this grossly underpaid profession vividly demonstrates that *supply and demand appear to have little effect on the wages of female-dominated professions*.

Second, most wage discrimination in industrial employment is a product of "initial assignment discrimination," as it was in *IUE v. Westinghouse* and *AFSCME v. State of Washington*. Initial assignment discrimination occurs when entry level unskilled applicants or applicants with equal skills are assigned to different jobs on the basis of sex, and female employees are paid less.

Third, the courts have consistently refused to sanction "law-breaking" because "others do it." The Supreme Court and lower courts have specifically rejected the market defense.

33/ A formal job evaluation may be required in order to structure an appropriate remedy, but not to determine liability. Many kinds of cases -- antitrust, school desegregation, etc. -- require technical support at the remedy stage.

Although *Corning Glass*[34] involved the Equal Pay Act, the Supreme Court's comment is equally applicable to broader claims of wage bias:

> The differential...*reflected a job market* in which Corning could pay women less than men for the same work. *That the company took advantage of such a situation may be understandable as a matter of economics, but its differential nevertheless became illegal once Congress enacted into law the principle of equal pay for equal work.*
>
> The whole purpose of the Act was to require that these depressed wages be raised, in part *as a matter of simple justice to the employees themselves*, but also as a matter of market economics, since Congress recognized as well that discrimination in wages on the basis of sex 'constitutes an unfair method of competition'." (At 205,207, emphasis added)

In *Norris v. Arizona Governing Committee*, 671 F.2d 330 (9th Cir. 1982), at 335, affd in part, rev'd in part 51 U.S. Law Week 5243(1983), the Court states:

> Title VII has never been construed to allow an employer to maintain a discriminatory practice merely because it reflects the market place.

Our society has advanced to the point where only a bigot would publicly state that because of the "market" Blacks and Hispanics should be hired for less money, or that because of the tragic unemployment rate of black workers they should be hired for less money.

The Civil Rights Act was designed to eliminate discrimination. "Following the market" is designed to perpetuate discrimination.

C. *Cost is not a defense*. The "cost" argument asserts that we must perpetuate wage discrimination because the "cost" of correcting it would destroy the economy. Congress did not place a price tag on the cost of correcting discrimination.

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[34] 417 U.S. 188(1974). In accord: *Brennan v. City Stores, Inc.*, 479 F.2d 235, 241 n.12(5th Cir. 1973); *Hodgson v. Brookhaven General Hospital*, 436 F.2d 719(5th Cir. 1970); *Laffey v. Northwest Airlines, Inc.*, 567 F.2d 429(D.C.Cir. 1976), *cert.den.* 434 U.S. 1086(1978), vacating & remanding in part, affirming in part, 366 F.Supp. 763 (D.D.C. 1973) and 374 F. Supp. 1382 (D.D.C. 1974).

In *Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702(1978), the Supreme Court stated:

> In essence the Department is arguing that the prima facie showing of discrimination based on evidence of different contributions for the respective sexes is rebutted by its demonstration that there is a like difference in the cost of providing benefits for the respective classes. *That argument might prevail if Title VII contained a cost-justification defense comparable to the affirmative defense in a price discrimination suit.* But neither Congress nor the courts have recognized such a defense under Title VII." 435 U.S. 702, 716-717(1978)(Emphasis added)

As Judge Tanner commented in *AFSCME v. State of Washington*, "Defendants' preoccupation with its budget constraints pales when compared with the invidiousness of the ongoing discrimination..." 33 FEP Cases 824.

D. *The victims are not to blame*.

As discussed, *supra*, the Reagan administration attempts to blame the victims by suggesting that the "cure" for sex-based wage discrimination is for women to change jobs. Again, only a bigot would tell black workers who are receiving a discriminatory wage rate that if they don't like it, they should get a higher-paid job. As Judge Tanner eloquently commented in the *AFSCME v. State of Washington* case

> ...this court can see no realistic distinction between discrimination on the basis of race or sex. The results are just as invidious and devastating. There is nothing in Title VII that distinguished between race and sex in the employment discrimination context.

33 FEP Cases 825 n.22.

The suggestion to "change jobs" is another one of this Administration's "blame the victim" tactics. Reagan officials have already blamed the hungry for "voluntarily" going to soup kitchens and blamed the unemployed for being without a job when they could "read the classifieds." Telling women whose jobs are illegally underpaid that they can work elsewhere is like telling a mugging victim to move to another neighborhood.

Michael Horowitz, counsel to the director of the Office of Management and Budget, apparently believes that "comparable worth" would help middle class white women at the expense of blacks. (N.Y. Times, Jan. 22, 1984). The OMB official ignores the fact that black women will be a major beneficiary of the eradication of sex-based wage discrimination. Significantly, however, OMB appears to assume that the victims, rather than the lawbreakers, should make restitution and that relief can be obtained only at the expense of the victims of discrimination.

V. Recommendations for Action

Based upon the foregoing discussion, we respectfully suggest that the Committee consider the following recommendations.

A. New substantive legislation is not needed. Existing laws -- Title VII and Executive Order 11246 -- prohibit discrimination in compensation. No new legislation is needed. Vigorous enforcement is needed.

B. Put the Congressional House in order. Congress is not only a legislature but an employer. Thousands of people work in the legislative agencies that report directly to Congress --- Library of Congress, Government Accounting Office, Government Printing Office, Botanical Gardens, Congressional Budget Office, etc. Many of these employees work in predominantly female jobs. As mentioned above, at least one legislative agency, GPO, has already been found guilty of gross discrimination in compensation on the basis of sex.[35] As an employer that should be concerned about discriminatory wage rates, we urge you to encourage the appropriate House Committee to retain an independent job evaluation expert to study wage discrimination within one or more legislative agencies.

Such a study would not only provide the basis for removing discrimination in those agencies, but would set an example for the rest of government and private industry. New legislation is not needed to do such a study. The proper congressional committee can appropriate the funds. This can and should be accomplished during this calendar year.

C. Exercise vigorous oversight

The federal enforcement agencies should be reminded, through hearings like this, congressional resolutions and regular oversight, that the people of the United States, acting through their elected officials, expect our laws prohibiting discrimination to be enforced. We applaud the resolution introduced by Congresswoman Schroeder, condemning the inaction by the federal agencies, and the bill introduced by Congresswoman Oakar imposing detailed reporting requirements. EEOC should not be allowed to make promises to Congress, as it did a year and a half ago, and then totally ignore their promises between the time they leave the hearing room and the time they are called back before another committee. As stated, Chairman Thomas made a firm "commitment" to the House Post Office Subcommittees to "place high priority on comparable worth issues." In view of the total lack of progress on such a "high priority" issue, one can only wonder what if anything has been accomplished with other issues of discrimination which come before the Commission. EEOC should be required to report back to this committee within a limited number of days on what action it has taken to enforce the law, as it promised the Post Office Subcommittee in 1982, and presumably will promise this committee today.

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[35] Thompson v. Sawyer, supra.

We urge this committee to make known to EEOC its opposition to the issuance of any further guidelines and broad policy statements regarding "comparable worth." The adoption of guidelines and policies have long enough served as an excuse for inaction. EEOC can and should develop policy on a case-by-case basis by carrying out its present - at least on paper - procedure for investigating sex-based wage discrimination, and leave in abeyance its proposed "comparable worth" guidelines.

Finally, as EEOC has apparently never requested that its budget allow for litigating sex-based wage discrimination, it should not be allowed to plead now that budgetary limitations prevent it from litigating such claims. Indeed, this committee is urged as part of its oversight function, to insist that EEOC earmark funds to litigate race and sex-based wage discrimination. Since the Commission has expressed concern over the cost of litigating such claims, this Committee is urged to use its best efforts to assure that EEOC will have sufficient funds which are earmarked for litigation.

D. Encourage constituents to use the laws already on the books.

Members of this committee and other Members of Congress concerned about discrimination have worked long and hard for the passage of laws outlawing such discrimination. Private enforcement was designed to be part of the scheme for enforcing these laws. Members of Congress can be of special help in educating their constituents - including unions, feminist and other civil rights organizations and individuals - as to their rights under the law and in encouraging them to utilize the law fully to exercise those rights. Specifically, Members of Congress should encourage the filing of charges and lawsuits based on wage discrimination.

E. Urge EEOC and Justice to file an amicus brief on behalf of the plaintiffs in the appeal of the AFSCME case.

Members of Congress should urge the EEOC and the Justice Department to file an amicus brief or to intervene on behalf of the victims of discrimination on the appeal of the AFSCME case. As Chairman Thomas has said, this is a straight Gunther Title VII case. EEOC and Justice have a legal duty to enforce the law as interpreted by the Supreme Court. Therefore, they are duty-bound to join in opposing the unlawful discrimination condemned by the district court.

VI. Conclusion

Finally, we've had 20 years of resolutions and rhetoric since the Civil Rights Act was passed. Advocates of equal pay for work of equal value have won the significant legal battles in the courts --- and we need to act. In the words of Judge Tanner, "It is time, NOW --- RIGHT NOW --- for a remedy."

Representative **Snowe**. Thank you, Mr. Newman, for your testimony. We appreciate your participation in this hearing today.

You mentioned in your testimony that comparable worth has become a red herring to obfuscate the real issue of discrimination and the clear holding of *Gunther*. It's my understanding that Chairman Thomas of the EEOC testified recently that EEOC is ready and willing to investigate *Gunther*-type cases but at this time has no policy on comparable worth.

I'm a little confused about the difference between *Gunther*-type cases and comparable worth. Is there a distinction and how relevant is the distinction to sex-based wage discrimination.

Mr. **Newman**. Well, I'm not sure what the words "comparable worth" mean any more. I thought I once knew, but it seems to be distorted in such a way as to make it impossible—I think deliberately—to make it impossible to enforce. However, I think it's sufficient to state that the *Washington State* wage policies are no different from the Connecticut wage policies and if *Washington State* was straight *Gunther*, then so is Connecticut, then so is Wisconsin, then so is Hawaii, then so is Chicago, then so is Philadelphia, then so is Los Angeles, and I could go on.

Now either he's wrong when he says *Washington State* is straight *Gunther* or he doesn't understand or hasn't investigated those other cases. And from my own knowledge and Miss Newell's knowledge, we know they basically haven't investigated them, which is why we are urging you to call for an investigation.

But he's also said in some of his other testimony that the reason for *Washington State* were admissions of violation. Well, no one can read that decision, no one could have been in that courtroom and concluded that the sole issue was that the State admitted that there was discrimination. Because if in fact there wasn't discrimination as a matter of law, it would matter not that an employer stood up and said, "I believe I'm discriminating." If the facts don't show discrimination, there is no legal violation.

I think we're going through a tremendous distortion as to what this issue is all about. The news interview of Assistant Attorney General Reynolds in which he said he's absolutely sure the judge is wrong when he's had no review of the transcript—the transcript isn't even available for anybody to review. The judge made a determination based on the facts.

Now as I indicated, segregation and segregation policy was a heavy part of this issue and I think it will be in every other case. Let me go one step further in answering. I'm sorry to be so long-winded in this answer, but one step further is that a determination that the wage rate disparity resulted in discrimination cannot be made by looking at a piece of paper that's called a charge. It can only be made after an investigation. And I think until they are prepared to say that they have conducted a thorough investigation, which we know they haven't, then that kind of statement just falls on its own weight.

Representative **Snowe**. But in your mind, there's no distinction between *Gunther*-type cases and comparable worth? I mean, they are one and the same?

Mr. **Newman**. Well, I don't want to to use the term because I think it's subject to such distortion. I prefer to talk as a lawyer.

The law prohibits discrimination in compensation and we don't have to deal with comparable worth. All we have to deal with is the question of whether there is discrimination in compensation. It may be there are some other things out there that won't be held to be in violation of the law as a matter of fairness and equity we might want to reach, but we're so far from that issue and sex-based wage discrimination is so blatant throughout the country which exists with virtually every employer, that I don't think we need to worry about what else there is that isn't covered by the existing law.

Representative **Snowe**. I agree with you. I think that comparable worth has become a buzz word and it's not a question of the worth of the employment, as you suggest, but one in which discrimination exists or doesn't exist, and I think that is the crux of the issue.

Can you explain to the committee, because I think it's important, what are the implications of the failure of the EEOC and other executive agencies to enforce existing civil rights laws? What are the implications for the charges that have been brought before the EEOC and other cases that are pending in the courts?

Mr. **Newman**. Well, so far, the implications are that they permit the discrimination to continue. I think the officials of these various agencies are guilty of malfeasance in office in not enforcing the law. I think it's very serious conduct on their part.

In terms of victims of discrimination, clearly it will perpetuate. These lawsuits do cost a lot of money to bring. It's very difficult for institutions to bring them and it's impossible for private parties to bring them because they are not simple lawsuits. It's not like an equal pay case where you have to have two people working in the same job and you can look at one wage compared to another. Here, the basic violation is established by looking at the pattern of discrimination that you could consistently show, as Senator Evans said before, that as you went up that evaluation line and you compared the men's jobs to women's, you found a consistent pattern of discrimination. It might not be enough to compare a nurse with a toll collector by itself—comparing Jack versus Jill may not be enough—but it becomes enough when you can then also compare all the Jacks and all the Jims and all the Johns against all of the Jills and Janets and Jeans and so on. That's what makes this an issue and that does take a little work. It will take money on the part of the agencies to do it and they have to be prepared to ask for a budget. They can't come around and explain—at least I don't think they should be allowed to come around and explain to congressional committees that they could not do anything about the issue because they don't have the budget to do it.

They have an obligation to get the budget to carry out their mission or at least to fight for it.

Representative **Snowe**. From your experience in litigating the case for *AFSCME* v. *State of Washington,* what facts outside of the particular case in question were very important to your position? For example, in the *Washington State* case, June O'Neill testified, as you mentioned in your testimony, in opposition to the comparable-worth theory. When this case was being litigated, was that testimony relevant? Is that something that the court took into consideration? Or, was it more important that there was a job evaluation study? Was that more essential to the case than testimony from the outside?

Mr. NEWMAN. Well, we argued that what goes on in the marketplace is really not relevant to whether this particular employer, in that case Washington State, engaged in discrimination. The judge determined to let the evidence in and we therefore—so I am giving my basic position and then I will comment specifically on what you said.

We had as our expert witness former Secretary Ray Marshall, who's a noted economist aside from being Secretary of Labor, and the State had two economists that it put on; June O'Neill was one of them. Basically, I'm saying their testing is not relevant, but; nevertheless, all of them agreed, all three of them—Hildebrand was the third one put on by the State—that the market does discriminate—let me correct that in a second—that part of the differential between the 59 cents and the dollar is explainable by training, education, length of time in the work force, but that at least half of the differential was unexplainable.

Now Ray Marshall says if it's unexplainable in all the years it has been studied, it is reasonable to call it discrimination. But June O'Neill says we just can't explain it. It's because we're ignorant that we can't explain it—and she was ignorant when she did the study in 1973 and she's still ignorant in 1983—although she claims to be an expert in this field, she will not concede that the reason for any part of the disparity is discrimination.

Nevertheless, as I said, at least half of that differential—in other words, roughly 20 percent of the actual differential—results from discrimination. At least nobody can explain it on any other basis.

So I think that what goes on in the market is irrelevant. I think the real issue is what happens with a particular employer, not the market. But even if you consider that, you get to the same place.

As again Senator Evans once said, the Washington State—correct me if I'm wrong, Senator—Washington State mirrors the market because they did a market survey, but the market is discriminatory.

Representative SNOWE. Thank you.

Senator Evans.

Senator EVANS. Winn Newman has been a skillful advocate over the years and, of course, we have worked very closely—or I did during my previous responsibility as Governor—with the union representing the State employees in I think a most productive and cooperative way. There was seldom any of the typical adversarial relationships that sometimes creep into labor-management relationships.

Winn, as you probably know from some of my recent comments, I'm not even all that sure that the Tanner decision is right or none of us is absolutely sure whether it will be upheld. Anyone who can accurately predict what courts will do is a better predictor than I am, certainly. But I guess regardless of the court decision, or leaving aside for the moment the question of discrimination in a legal sense, clearly there is all the evidence which you have pointed out and which we all know that shows the differential existing in the marketplace. And the question is whether it can be explained.

Some suggest that, as you say, they're ignorant of the difference. Others suggest that that proves there is discrimination. But leaving aside the legal approach, do you believe that just for internal alignment purposes some scheme such as this is a legitimate way for Government to set their wage scales? I presume you do.

Mr. **Newman**. Well, first, let me say I enjoy our role reversal. The last time we were together I was asking the questions while you were a very excellent star witness.

I guess part of the answer, aside from my opinion on this, is the fact that most every large employer has used job evaluation, as you know, Senator, for the last 60 years or more. It's a well-accepted practice. More than two-thirds of the employees of the United States are covered by some formal kind of job evaluation and every other employer who doesn't use a formal job evaluation uses some way of looking at jobs to know that the forklift operator gets more than the janitor and the typist gets more than the file clerk and so forth. So clearly it is what industry has been doing.

I think what the problem is is that you took a standard method of doing job evaluation that many people aside from Willis have been using over the years, and then you did this terrible thing of thinking you should implement it. Now that's where the problem came in. Employers have used it but they have used it on a two-track system. Basically, they do pay more for skill, effort, and responsibility for all jobs, but they do it with respect to men's jobs on one track up here and with respect to women's jobs down here and they do go up as the skill, effort, and responsibility goes up.

What really has happened here is that the employers were always defending job evaluation and the unions were always fighting them because the unions frequently did not want a scientific system for evaluating wages. There has been a role reversal again once we've gotten into the discrimination area. So once really the employers' method of evaluating jobs began to be used to show discrimination, many employers started to run away from it, but I think they're really hoisted on their own petard to that extent. This is an accepted theory. Granted, there are different ways of doing it, but it certainly is an accepted theory.

Senator **Evans**. Giving a correction, I wonder if you have any comment on the thesis I tried to bring forth that rather than horrifying people with the thought of nationwide job evaluation groups that would invade every industry and every company, that Government has a legitimate right to determine its internal alignment of jobs. Since governmental salary setting, if applied broadly, is a pretty important part of the marketplace, that that in itself would allow the market to work and would more rapidly than some would suggest change the whole landscape in the private sector and would be sufficient to get the job done.

Mr. **Newman**. Well, I would totally agree. The Government really becomes a pace-setter. It's a little hard for Government to say I only pay what the market pays. It's a major market. It's a little hard in Washington, DC, for the Federal Government to say, "I only pay what the market pays," as it was in Olympia, WA, for the State to say, "I pay what the market pays." In a way, they chase each other around in circles because clearly the largest employer is the leader and it's the largest employer that basically gets followed to a very large extent.

So there's no question in my mind that a change in government is going to have ramifications throughout public employment and private employment. Particularly if you change the Federal system, I think that becomes the grandmommy of them all and all the State actions have some relationship to it, and it really sets the whole pattern. I totally agree that that's a key. Everything comes tumbling down if you change things at the Federal level.

Senator **Evans**. I might just comment, Madam Chairman, that all of the controversy and all of the complaints are not confined in my experience to the whole concept of comparable worth. We used to get a large number of legislative and private citizen complaints about the prevailing analysis which we did to attempt to reflect the marketplace as it then existed, each by any of them as we would go through the process of establishing from the broad survey as we did what wages were being paid in the other governmental units and in the private sector, we found just as many complaints about that and its validity—legislators saying, "What do you mean, a legal secretary should get this much? I don't pay my legal secretary anywhere near this much"—the difference between being a single practitioner in a small farm community as opposed to a legal secretary for a large law firm in a major city in the State. There are just all sorts of disparities in attempting even to reflect the marketplace.

I suggest that as we're going to get all the complaints anyhow, we might as well do it by leading the pack rather than reflecting the pack.

Mr. **Newman**. I might say with respect to that, that during the Washington State trial the Director of Personnel, Leonard Nord, who the Senator knows well, testified as to the fact that bringing in these increases by implementing the comparable worth system would be disruptive to the work force because some people would get big increases and that would upset somebody else. There, we were dealing with the kind of wage surveys the Senator was just talking about. We had particular examples where particular classifications, as a result of the market survey that the State did, got exactly the 25—more than that—I think about a 27- or 28-percent increase and that happens—not in every classification, but typically that kind of thing happens. That was not disruptive, you see, because people expected that based on the market survey, but it would be disruptive if you did it in order to institute some sort of comparable worth system.

I think it becomes, to some extent, a question of what people are used to.

Representative **Snowe**. I just have a couple more questions. You mentioned in your statement that AFSCME has filed other cases with the EEOC. Are these cases similar to the *AFSCME* v. *State of Washington*?

Mr. **Newman**. Yes.

Representative **Snowe**. So there is nothing unique about them?

Mr. **Newman**. The State of Connecticut—as a matter of fact, the same evaluator is doing the State of Connecticut as did Washington State, Norman Willis. Approximately the same number of job classifications are involved, about 3,000. I have been told by him that the evaluations come out about the same way, very close, even though they're different and use different committees to do it, it's really very hard to say that's a different case.

Representative **Snowe**. You also note in your statement that AFSCME affiliates in New York and Los Angeles and San Mateo Counties negotiated upgrading for female-dominated classification without doing a formal study.

What considerations were taken into account in these negotiations and how important are job evaluation studies? I was interested to note what Ms. Hartmann said and how the National Academy of Sciences viewed job evaluation studies that are behind the state of the art, in her words. Could you comment on that?

Mr. **Newman**. Well, they do differ. There are variances. What I think you will find, however, is whichever one you use, you find roughly the same results with minor deviations—I lost the point—give me your question again. I'm sorry.

Representative **Snowe**. First of all, talking about the cases, the AFSCME affiliates who negotiated upgrading female-dominated classifications.

Mr. **Newman**. OK, I have it. They would do that on the basis sometimes of just looking at a job. It has not been uncommon in the industrial world for a union to come in and say this job is undervalued, anybody looking at that job can tell it should be higher, and sometimes results come about in that way without any formal evaluation. Sometimes it's formal. Sometimes the union and an employer will get together and say, OK, we disagree, let's get an evaluator and let's agree on who that is. Sometimes it comes about through a grievance that gets filed and it may go to arbitration and the arbitrator may hear evidence from both sides and make a decision. This, by the way, is done in equal pay cases as well, where judges hear testimony and they may hear a job evaluator from both sides and he decides where they're coming out.

I think it's important to stress that you don't need job evaluation to show that discrimination exists. I think when you get into the remedy stage of how you remedy the discrimination you're going to need to look at things more carefully, but let me give an example.

Without the job evaluation—and again *Washington State*—we noted, for example male barbers were getting higher pay than female beauticians. Now you don't need a job evaluator to know whether you need more skill to take care of Lisa's hair with permanents and so on than to take care of mine. The judge sat up straight when he heard that. We looked at entry level jobs where the requirement was high school. That's all the State required and there were 35 jobs requiring high school, roughly 35 or so, and the jobs that were predominantly women and the jobs that were predominantly men were segregated, and we found the same 20- to 25-percent wage spread. Next, we took those jobs that didn't require high school, without looking at job evaluation. This was the State standard of what did you have to have to get that job. No high school over here [indicating], you have that same 20- to 25-percent spread. Those kinds of things were there and I think they are going to be there anywhere. They're in the *Westinghouse* case where women were hired at grade 8 and men were hired at grade 13. I could go on with that.

Another *Washington State* one, retail clerks were one category and about 10 years ago they decided to split them into categories, retail clerks and another one, liquor store clerks. There's still a market survey. It's interesting how you can play with a market survey. They then compared them with a different group of people, the grocery store clerks and the retail people compared with department store people, and the result was a 28-percent spread. So, it happened that the retail clerks were women and it happened that the liquor store clerks were men.

There are those kinds of things where the State itself at one point put them together and then, purely for arbitrary reasons, you have one particular group going before a personnel board causing that change to be made.

So, I underscore that while job evaluation is clearly helpful, it clearly is a way to really do this, and I would advocate that, but I would not suggest that one can show discrimination in a courtroom without the job evaluation and a court might then order and has ordered—courts have ordered job evaluations to determine the remedy, and to the extent people don't want a court to do it, which I think most people don't, then it militates in favor of people doing things on a more voluntary basis.

Representative SNOWE. Is it difficult for an employer to prove the fact that they are not discriminating? For example, the four defenses used under the Equal Pay Act and the defense that's incorporated in title VII says, using any other factor other than sex—is that so difficult for an employer to prove?

Mr. NEWMAN. No; I don't think so. But there are three—of course, merit.

Representative SNOWE. And seniority.

Mr. NEWMAN. And quality or quantity of production. But any other factor other than sex is for an employer to show why there is this disparity. If the employer has a valid reason for showing this disparity, it can show it.

Again, in *Washington State*, reasons were offered. The judge did not find them acceptable, but clearly they could be shown.

Representative SNOWE. If the employer is not discriminating, then it shouldn't be so difficult to prove why a certain job is accorded specific pay?

Mr. NEWMAN. I would not think so, no, but if the defense is—the main defense in *Washington State* was that they followed the market. That was basically saying that if other people discriminate, we will, too.

Representative SNOWE. Thank you very much, Mr. Newman. I appreciate you being here today.

Mr. NEWMAN. I appreciate you having me.

Representative SNOWE. Next we have a panel of economists, Cotton Mather Lindsay, professor of economics at Emory University, and Mark Killingsworth, professor of economics at Rutgers University. We welcome both of you gentleman. Why don't you begin, Mr. Lindsay.

STATEMENT OF COTTON MATHER LINDSAY, PROFESSOR OF ECONOMICS, EMORY UNIVERSITY, ATLANTA, GA

Mr. LINDSAY. My name is Cotton Lindsay. I'm a professor of economics at Emory University in Atlanta, Ga.

I have been involved in research on topics related to the effect of discrimination on wages for about 6 years. I might add that my wife is a professional reading therapist, my mother is a corporation president, one of my sisters is a chemist and another sister is a CPA. So my interest in the topic of pay equity for women is, therefore, more than purely academic.

I would like to discuss two issues relating to the implementation of the comparable worth doctrine. The first concerns whether there is a pay equity problem to be addressed with such a policy. Certainly we know that women make less than men on average. The question that is raised by the pay equity debate is far more difficult to answer than this. That question is whether the wages of women are less than men would earn in the same circumstances. There is far less agreement on this question than on the existence of a wage differential.

Second, I would like to discuss the effects of universal enforcement of the comparable worth doctrine. In my view, too much attention in the recent debate over comparable worth has been directed toward the alleged defects and injustices it is intended to correct. Too little attention has been paid to what this untested doctrine will do to the American labor market. Comparable worth is not the only way to achieve pay equity. Vigorous enforcement of equal opportunity rights for women, already on the books, will ensure that women are not barred from economically more rewarding careers. Reliance on this established and proven remedy will entail none of the undesired side effects of comparable worth. These effects extend far beyond the question of whether employees can or ought to be required to raise the additional money to pay women comparable wages. I am convinced that implementation of this policy on an economywide scale would create severe incentive, employment, and productivity problems for the American economy to the detriment of both female and male workers.

The first hypothesis at issue maintains that a substantial portion of the large observed pay differential between men on average and women on average is due to discrimination. Surprisingly, given the intensity of research here over the past decade and a half, very little evidence has been brought forth to support this view. On the contrary, many otherwise clearheaded social scientists seem to regard the existence of pay disparity as proof that this disparity is the result of discrimination. One might, with equal legitimacy prove that the pay gap is simply the reflection of women's inferiority to men in work. Few would find the latter argument convincing, and let me hasten to add that I find it totally unappealing. My point is that documentation of a pay gap does not permit us to assess the superior predictive power of either hypothesis.

Nor are we limited to these two alternative explanations. A number of quite plausible explanations for the pay gap have been advanced in recent years which are also consistent with observations on men's and women's earnings. Let me briefly discuss a few of these which have been studied by economists.

The first is an application of one of the oldest principles of economic theory, the division of labor. Adam Smith argued that the productivity of each worker may be increased through specialization in a few tasks that may be practiced until they are perfected. We observe this principle in practice in the organization of family households. Typically, the husband specializes in work outside the home, while the wife specializes in home-based activity. Husbands bring home the bacon, and wives cook it, so to speak.

This division of labor has important consequences for wages of each sex among married men and women who hold jobs. Married women who work outside the home seek different sorts of jobs than their spouses. As husbands are specialists in wage earning, their jobs and careers dominate family location and moving decision. When husbands move to better their prospects, wives must also move, often to the detriment of their careers. Married women, therefore, seek careers for which the requisite skills are transferrable from one location to another. For similar reasons, working mothers value jobs with more flexible hours and shorter commuting distances.

Why do jobs with these characteristics attractive to married women pay less? A second time-honored economic principle tells us that one rarely gets something for nothing, and this applies to attractive jobs, as well. Married women will not accept work involving expensive retraining, rigid schedules, and long commutes at the same wages offered in more attractive jobs. On the contrary, they will offer their services in the more attractive jobs at lower wages than can be earned in the less favored occupations. This same feature of the labor market explains why jobs involving risk of injury, physical or mental stress, and extensive time away from home pay more to members of each sex.

This division of labor hypothesis has been tested by James Gwartney and Richard Stroup (1973). These economists reasoned that, both single women and single men are similar in their inability to exploit the gains from the division of labor within their households. Factors which make certain jobs more attractive to married women are less desirable to single workers of both sexes. The wages of single men and women therefore provide a natural experiment. If discrimination is responsible for wage disparity, it should operate with equal force on the wages of single women, too. The wages of single women should be depressed relative to single men to the same extent as one finds between married men and women, if discrimination is the cause of this wage gap. Yet, when wages were compared among this unmarried group, virtually no difference was observed. This finding is inconsistent with the discrimination hypothesis.

Now let us turn to a second hypothesis for the wage gap. According to this view, the wage gap reflects different effects of experience on earnings. Experience is associated with increased earnings because workers invest in training both on and off the job. This relationship between experience and earnings is conditioned by four principles: One, for any given level of experience, the more intense has been the investment in training, the higher will be the wage rate. Two, skills tend to diminish and become obsolete over time. Therefore, the more recent has been the experience, the less time skills will have had to atrophy, and wages will again be higher. Three, work interruptions interfere with the training process and make it more costly. Four, as workers must be employed to obtain the benefits of training, investment in job skills will be less attractive to workers who expect to be only intermittently employed over their working lifetime.

These four principles taken together explain a wage gap without discrimination. Because most married women leave the labor force for some time to bear and care for children, investment in training costs them more and is less attractive. They will rationally invest in it less intensively, and for given levels of experience, they will have less. For given levels of experience, women will have accumulated less training, and this training will have depreciated more than will be true of men with the same experience. Women with the same experience will earn less.

Unlike the division of labor test performed by Gwartney and Stroup, this so-called human capital hypothesis is difficult to test. An effective test requires the researcher to include a variable for anticipated intermittency in labor force, and such a variable is understandably difficult to construct from existing survey data. Findings have therefore been mixed, but there is no disagreement on the fact that women experience more intermittent employment than men. Women college graduates have a lifetime labor force participation rate of only 41 percent, and this rate is even lower among women with less education. Findings supporting an effect of intermittency on wages have been reported by Jacob Mincer and Solomon Polachek and by Elizabeth Landes. Mary Corcoran and G.W. Duncan have found a much smaller effect, and analysis of this hypothesis is continuing.

In my view at this moment, however, one can conclude that at least some of the observed difference in wages is not the result of anything more than the fact that men and women with equal experience do not, on average, have equal skill. Experience is thus a biased measure of skill, and it is skill differences that are responsible for wage differences.

A third hypothesis concerning the wage gap is that it represents nothing more than a statistical artifact. According to this hypothesis, women and men with equal education and training are paid equal wages, but when one or both of these factors is measured with error, a bias is introduced giving the appearance of a wage gap. This will be true even when the measurement error itself is biased so long as the explanatory variables are themselves correlated with gender.

Masanori Hashimoto and Levis Kochin have examined the effect of this bias in explaining the wage gap between black and white males with encouraging results. Virtually, the entire observed gap between these groups—22 percent—disappeared when a procedure was used which eliminated the effects of this statistical bias. Support for this interpretation of the gender gap may also be found in the results of Richard Kamalich and Polachek.

In summary, there are several hypotheses grounded in economic principles that are consistent with the observation of an apparent gap between the wages of women on average and men on average. Statistical tests of the explanatory power of these hypotheses is generally supportive, and there are others that remain untested. I am not familiar with any similar tests of the discrimination hypothesis. On the contrary, I have never seen formulated a method for a direct test of the proposition that discrimination accounts for any of the observed wage gap.

One of the reasons for this dearth of testing of the discrimination hypothesis is that it is very difficult to develop from standard economic principles a theory in which race or sex prejudice can produce a wage gap. On the contrary, standard economic theory suggests that the presence of discrimination by employers or male workers leads to segregation of workers among employers with no difference in wages. The reason for this is quite simple. As long as workers are free to choose their own employer, employers have no control over the wage they pay to any worker. Competition in the labor market prevents employers from paying any employee less than he or she is worth. If women workers are equally productive, and a prejudiced firm seeks to pay them less than men, women will offer their services to other firms where they are appropriately paid. The end result is segregated employment. Men only are employed in prejudiced firms and are paid what they are worth in those jobs. Women and men will both be employed in unprejudiced firms and will be paid what they are worth in those jobs. Wages will be equalized across the two sets of jobs by men. These workers who do not suffer the effects of prejudice will shift from one employer to the other until the same wage is paid in both.

It is sometimes argued that the wage gap is the result of the fact that women are "crowded" into low paying jobs while men fill all the higher paying jobs. This view rests on an ambiguous and unusual usage of the word "crowd" as a transitive verb. Economic theory recognizes no such distinction as intrinsically high or low paying jobs. The wages in each occupation are determined by the demand for workers and the numbers seeking employment in each. The wage structure across occupations reflects the flows of workers into each. Some occupations pay more than others because qualified workers of either sex cannot be induced to accept these jobs at the same wages paid in occupations offering better working conditions or lower entry costs. Is this "crowding" in any meaningful sense?

It may, of course, be argued that women have no choice; that they are excluded from the occupations which pay more, but I find this argument difficult to credit. Elsewhere, I have calculated that if the full wage gap is the result of discrimination, the typical corporation could increase its profits by 61 percent each year by merely replacing all male employees with females. Such a firm would suffer no loss of productivity and could lower its wage bill by 33 percent for each male worker replaced. While it may be true that some, perhaps many, firms are willing to pay such a price to discriminate, I am convinced that most would find the attraction of such an entrepreneurial coup irresistible.

Competing private firms are unable to pay workers less than they are worth to other firms. Some employers are in a position to pay workers more than they are worth, however. It is here and here alone that standard economic theory provides scope for wage effects of discrimination. If wages are above the competitive level, an excess supply of workers will seek these overpaid jobs, and a prejudiced employer may pick and choose. Few such havens from competition exist in the private sector, however. Competition and the profit motive influence firms to pay each worker no more than is necessary to keep him or her. Only in cases of wage regulation such as the minimum wages set under the Davis Bacon Act is discrimination by private firms protected in this way.

There is reason to believe that Government employers have greater scope for discrimination from this source. There is little incentive to restrict wages for Government jobs to the minimum required to attract qualified applicants. The cost reductions achieved through such stewardship are not paid out in dividends to clamoring investors; government managers receive as their reward only the gratitude of a remote and insensitive electorate. In some cases, the attraction of association with workers of his or her own kind may outweigh consideration of that gratitude.

If prejudice does produce wage effects in these cases, the preferred solution is not the comparable worth formula of raising the wages of women Government workers to parity with the wages of men. Why should some women be overpaid simply because some men are? The efficient solution is to eliminate overpayment for all. If wages in all Government jobs were lowered to competitive levels, managers of Government enterprises would no longer have scope for discrimination, and taxpayers would receive a bonus besides.

If wage parity is all that matters, we can certainly achieve it. One way to ensure equal pay is to enact legislation requiring that all employees of all organizations, both public and private, be paid the same wage. This is the ultimate comparable worth formula. The only compensable factor under this scheme would be appearance at the workplace during specified hours. Such a system would create chaos, of course, but it would eliminate wage disparity. Clearly, this proposal would never be adopted in any country because its cost far exceed any perceived benefit.

It is not a silly example, however, for it contains all the defects of the comparable worth doctrine, while admittedly exaggerating them. The defects are the result of the inability of the job evaluation studies to measure and incorporate all factors important to market wage determination. No proponent of the job evaluation process would claim that any job evaluation system accurately measures all factors that determine what wage the market would set for each job. On the contrary, some proponents of a comparable worth argue that market conditions contain a residue of discrimination's wage effects and should be ignored in a job evaluation process. The effects of equalizing all wages and of adopting a standard comparable worth plan, therefore, differ merely in degree. Consider, therefore, the results of perfectly comparable pay.

The first effect would be that no one would collect the garbage. Why would anyone accept this exhausting and unpleasant job handling society's debris when easier work earned the same pay? Being a lifeguard at a country club or a crossing guard at a busy intersection would pay the same wage. A free labor market allows these wages to adjust until adequate numbers are willing to do society's dirty work. Perfectly equal pay merely exaggerates the problems that would beset attempts to use job evaluations to make wages comparable.

Job evaluations cannot be so finely scaled as to admit precisely the correct weights and measurements for all working conditions. Too many applicants will seek jobs that are overpaid and too few will seek those for which insufficient weights were assigned. A similar story could be told describing a wholesale migration of workers from the North and West where the cost of living is high to the Sunbelt where living is cheaper. Certainly no one would live in Alaska if wages were equal everywhere.

Another effect would be that no one would change jobs. As technical change opened up new opportunities and made some occupations obsolete, no one would leave his or her old job for the stressful uncertainties of settling in to a new one. New jobs would remain unfilled or fill up very slowly as young workers trickled in. New plants opening up in new locations would have difficulty persuading workers to pick up and move to the new facilities. Similarly, I see no means by which job evaluations can incorporate factors permitting dynamic adjustments to changing market conditions like these.

No one would develop skills. If entry level jobs paid the same as jobs requiring extensive and difficult training, who would bother? Who would ever become a master electrician, a concert pianist, a cabinetmaker, a doctor, or an accountant? Learning these skills is costly in time taken away from the labor force and in schooling. Job evaluations give points for education, but do they give the right number of points to the types of education that the market values? Job evaluations occasionally award points for experience, too, but experience by itself is worthless. It is the skill obtained through years of on-the-job training that increases productivity and, therefore, market-evaluated worth. Can job evaluations distinguish between skill and experience?

Finally, and perhaps most importantly, with perfectly equal pay, no one would work. If wages are calibrated strictly on the basis of job characteristics rather than performance, who, indeed, will put forth the effort to achieve anything but the bare minimum necessary to stay employed. Under a market wage system, effort is rewarded with raises and promotions. Underachievers remain underearners. With comparable worth the focus of attention in determining wages is shifted from performance and productivity to points and weights. By rating jobs rather than people, job evaluations dilute the incentive to be a productive worker and encourage instead the accumulation of factors important to the job evaluation itself. Statistical indicators of qualifications take precedence over the observations of foremen and managers who themsleves have an important stake in worker productivity. If nothing but paper qualifications are required for securing and holding a job rated at a particular wage, then paper is all that will be produced.

Admittedly, these effects have been exaggerated by my example of perfectly comparable pay. Make no mistake about it, though, the differences are merely matters of degree. Comparable worth will cause shortages in some occupations and queues of unemployed workers in others. It will discourage job mobility and investment by workers in improving their skills and, finally, it will reduce the incentive to put forth effort and to compete. At a time in which American labor productivity growth is lagging far behind that of workers in other countries, we cannot afford comparable worth.

Representative SNOWE. Thank you, Mr. Lindsay.

Mr. Killingsworth.

STATEMENT OF MARK R. KILLINGSWORTH, PROFESSOR OF ECONOMICS, RUTGERS UNIVERSITY, NEW BRUNSWICK, NJ

Mr. KILLINGSWORTH. Thank you. I am a labor economist at Rutgers University in New Brunswick, NJ, and I can't help but think of a story which is a true one—I'm changing the names—that goes back to the days when virtually all economists were male. We're now doing better than that. But back in the days when virtually all the economists were male, two couples, the husbands of which were economists, met and one couple was moving to take an offer at a new university and the wife of the couple was complaining that the house they had sold had seven rooms, two bathrooms, and a large garage. The house they were buying in the new town had three bedrooms, one bathroom, no garage, and cost them twice as much money. And she just couldn't get over that; and the husband of the other couple, whom I will call Paul, said, "Well, that's obvious. The reason is just simply that in relation to supply, demand in the area that you're moving to is a lot higher and that explains it." Paul's wife at this point interrupted and said, "Oh, Paul, just for once can't you think like a human being instead of like an economist?"

On the comparable worth issue, I am reminded of the line in "1066 and all that" about the difference between the Cavaliers and the Roundheads in the English Civil War. The Cavaliers were wrong but romantic, whereas the Roundheads were right, but repulsive, and I want to try to avoid being repulsive but also try to be right.

The problem to be addressed by comparable worth, as I understand it, is discrimination against women and, in particular, two kinds of discrimination. No. 1, a concentration of women in a relatively small number of very low wage jobs and, No. 2, a situation where people feel that pay in those jobs is "artificially depressed" and although it may seem and in fact I think to many people does seem that those two statements are just different ways of saying the same thing, it strikes me that those may actually be different complaints in a certain sense which I will address later.

Now as a proposed solution to that problem, comparable worth is essentially involved, as I understand it, with the following: a direct intervention into the setting of pay not in some sort of uniform national way but rather on an employer-by-employer basis looking at what goes on within a given firm, to require a given firm or employer to raise pay in predominantly female jobs where those jobs are found to be comparable to higher paid predominantly male jobs, and comparable would be defined or measured in terms of a job evaluation that would award points to jobs according to skills, effort, responsibility and working conditions, generally defined.

Now I think that although I warmly share the conception of the problem to be addressed and in particular think that the alleged manifestations of discrimination indeed are, I think it's important to ask is comparable worth necessarily the solution? Was prohibition necessarily the solution to the drinking problem that this country had and in fact still has?

I think that although one may quarrel about the evidence of the existence of a problem and what it means, one could also legitimately say we agree that we've got a problem, but the question remains, what's the solution?

Well, it seems to me that's considered as a solution to these problems, which in my view undeniably exist, the whole concept of comparable worth is simply fallacious. Let me explain what I mean by that.

No. 1, even in a society where all employers were literally gender blind, there's absolutely no reason on earth to believe that jobs that job evaluation finds to be comparable are necessarily going to get the same pay.

I guess an example of that comes from Sharon Smith, who's a former colleague who's now at the Federal Reserve Bank in New York. Her example is the following: imagine that we have two translators, one who translates French into English and the other translates from Spanish to English. Suppose we do a job evaluation of those two jobs and I think a priori both of them require essentially the same sort of training. Both of them, I would think, a job evaluation would say required the same efforts and had the same responsibility, and unless the employer in question was kind of unusual, it would be kind of surprising if they didn't also require the same working conditions.

So the job evaluation would rate these two translator jobs as comparable and therefore would require that they be paid the same wage at this given individual employer.

Well, suppose we discover that the employer that we're talking about is located in Miami, or perhaps to take an example closer to home, in Boston. Is there any real way to be sure that even if all employers were literally gender blind those two jobs would in fact pay exactly the same wage? I don't think we have any idea at all whether that would be true.

To take the Miami case, it might very well be true that there would be a large supply of people qualified and able to be Spanish-English translators. That would mean that the pay for Spanish-English translators would probably be lower than the pay for French-English translators in Miami. On the other hand, Miami is, of course, the center for business with the Spanish-speaking world so therefore it might very well be true that the demand for Spanish-English translators in Miami would be a good deal higher than it would be in other parts of the country even in relation to the supply. If that were true, then the Spanish-English translators might very well be making more money even in a society that was completely gender blind.

So it seems to me, No. 1, that there is simply no reason for thinking that jobs that are comparable in terms of a job evaluation would necessarily get the same pay even in a society where all employers were literally gender neutral.

The reverse case of that is that I also see no reason to believe that jobs that job evaluations find are not comparable would necessarily get different pay. Here an example is that of the police. I think many of us would agree—I do because I'm not a policeman—that being a policeman is a dangerous and arduous sort of job and I think it not unlikely that a job evaluation might very well award more points to police work than to various kinds of clerical jobs for precisely that reason. So then, under comparable worth, paying a premium wage for police officers would be justified, justified in terms of the comparability study that was done.

Well, now let's ask would it in fact be necessary if the employer of these police and these clerical workers, let's say State government, would it in fact be necessary for State government to fill all police jobs—in order to do that, would it be necessary to pay a premium wage? I don't think we have any idea whether that in fact would be necessary, and in particular, if enough people think of office jobs as boring and police jobs as exciting, then they might very well be willing to take less and be police officers rather than take clerical jobs.

As an example of that, every 2 or 3 years in New York City when they give the police exam, the city has to rent auditoriums at high schools and set aside space in various city office buildings. There's a mob of people, something like 20,000, who take the police exam to qualify they hope for 1 of approximately 500 openings. So I think there may be a good deal to this example. It's not I think entirely hypothetical.

Now since one often hears debate about does the market or does the market not justify paying various different jobs different wages, I think the second difficulty with comparable worth is that to the extent that it simply says, the market is invalid or tainted because although Killingsworth comes up with these hypothetical examples about what would go on in a gender blind society, we don't have a gender blind society. We know that there are plenty of employers who discriminate, and I agree with that, but I think the difficulty is that, although it's certainly true that what we see in the marketplace now is clearly influenced quite heavily by employer discrimination, at the same time, comparable worth in saying we need to do something without reference to the market, is making a serious error. And the reason is that in a sense the problem about employer discrimination is not that it makes markets incapable of functioning but rather that they function all too well. In particular, if you simply raise the pay in low wage jobs of a given employer, then you are going to reduce opportunities for employment in those low wage jobs without creating additional opportunities for employment in higher wage jobs. And to the extent that comparable worth simply says raise the pay in these low paying jobs, that's exactly what's going to happen.

Again, unfortunately, the market works and in many respects it works only too well, better than in fact the advocates of comparable worth recognize, unfortunately, but again, I think one has to deal with facts and the way markets actually work. One ignores the operation of actual markets at one's peril.

Now the final thing—and I'll be brief on this because Mr. Lindsay has already alluded to it—employer discrimination is not the whole story. It seems to me that an awful lot of concern about recent Supreme Court decisions reflects that view. I don't think one is being silly in saying that employer discrimination is not the whole story. There's an awful lot of discrimination that goes on before men and women or boys and girls ever get into the labor markets that shapes the choices that people make before employers ever get to them. Employers have to deal with the labor force as it gets created and as it enters the job market for the first time, and a lot of the differences between men's and women's outcomes in the labor market can be attributed to those kind of phenomena rather than to direct discrimination by employers.

Now I have mentioned or at least alluded to consequences of imposing comparable worth. I have some lengthy and I suppose from the standpoint of this committee ratified discussion of what economic analysis leads one to think would happen, but sweeping all that aside, as I think many might want to do, what we're left with is the question, well, do you really know in fact whether these academia nuts or macadamia nuts and their predictions would actually be borne out? We need to ask, is there any actual evidence that all these dire consequences would in fact ensue?

I'm afraid the answer is yes, for basically the reasons I have given. If you look at the experience in Australia where they've had comparable worth now for approximately 12 years—they call it equal pay for work of equal value, but it boils down to essentially the same sort of thing—what has happened in Australia, at least for the period that the two Australian economists studied it, was that the relative rate of growth of employment for women was cut by a third. In other words, the rate of growth of employment for women relative to that of men was cut by a third, from roughly 4.3 percentage points down to something like 3 percentage points a year in excess of men. That's not a trivial effect of the comparable worth policy. That's the effect as of 1977. If it were studied from 1977 to 1984, as it hasn't yet been, then it might very well prove to have had a greater effect over the longer period of time. I don't think that's something that one can afford to ignore.

The second effect of comparable worth in Australia was to put approximately a half of a full percent, that is 0.05 of a percentage point, onto the existing unemployment rate for women in Australia.

I want to emphasize that these are, other things being equal effects, meaning that abstracting from just the normal trends and cycles in the employment and unemployment rates of women, what comparable worth does is to aggravate on the one hand the unemployment effect and, on the other hand, to modify or attentuate the growth of employment. In the absence of comparable worth in Australia, the graph of women's employment growth would have been higher and the graph of women's unemployment rates would have been lower.

Now if comparable worth is so bad—and I do think it's so bad for the reasons I've indicated and discuss at somewhat greater length in my prepared statement—I think it's incumbent upon me to say a little something about alternatives.

No. 1, I think the old-time religion, the old ideas if you like, of title VII and other kinds of conventional anti-discrimination measures are worth looking at. The fact that they are not now enforced may mean that it might be a good idea to get different enforcers, but it doesn't mean that if they are enforced those laws can't work.

In particular, the essential difference between comparable worth and title VII sorts of remedies it seems to me is the following: What comparable worth does is make it more expensive for employers to employ low wage predominantly female labor with I think predictable consequences. What title VII does is to make it more expensive for employers to treat identical men and women differently and provided a title VII remedy is pursued, employers are therefore finding that it becomes more costly for them to exclude women from higher wage jobs, to pay men and women doing the same jobs differently. Wages rise for both reasons. Women get paid more for doing the same job and, second, they also can migrate if they are qualified from low paying jobs to high paying jobs.

There's a third indirect consequence because as women leave low paying jobs for high paying jobs, the supply of labor for low paying jobs is reduced and provided wages adjust to that scarcity wages in the low paying jobs are going to rise too as a consequence of conventional title VII type remedies.

Now I said provided, and that goes back to what I said at the beginning; namely, people feel or have said with striking regularity that they think that pay in low paying predominantly female jobs is artificially depressed, and when they say that, some of them may mean it's artificially depressed because of discrimination, but it strikes me that they may also be saying that may be a wedge that the artificially depressing of wages in some of those low wage jobs may be due to something quite different from discrimination; namely, to what I would call cartelization or monopsonization of the labor market, a situation where employers far from competing with each other for labor and find they don't do very much competing because there's a large oversupply, in fact, instead, conspire and collude together to keep wages down in a formal wage fixing agreement which in principle is very little different from the sort of price fixing agreement that producers often collude to work out.

Now there has been some testimony in prior hearings that there may in fact be various kinds of collusive employer wage fixing agreements and those agreements, if they do exist and if there has been that sort of collusion, monopsony—if those agreements exist, then what they are doing is quite clearly to hold wages down and prevent them from adjusting. That, in turn, may help account for the stories that one hears about widespread shortages in various jobs and yet wages don't go up in those low paid, predominantly female jobs where there are such shortages.

So I guess the conclusion I come up with is that title VII and perhaps also very different remedies that nobody has really tested or thought of very much may be far preferable to comparable worth. And the untested remedy that I will simply conclude on is more effective enforcement and possibly an amendment to the antitrust laws to prevent the sort of collusive employer wage fixing that, if it exists, can clearly have an artificially depressing effect on the wages of women.

[The prepared statement of Mr. Killingsworth follows:]

Prepared Statement of Mark R. Killingsworth

In my testimony today I want to focus on the following points:

- "Comparable worth" is conceptually flawed. It embodies a fundamental misunderstanding of how real world labor markets operate and how employer discrimination harms women. Even if employers were completely gender-blind, there is no reason to expect either (i) that "comparable" jobs would necessarily receive the same pay, or (ii) that *non*-"comparable" jobs would necessarily receive *different* pay. Indeed, "comparable worth" may well serve to justify and protect pay differentials between jobs that are a consequence of employer discrimination.

- Requiring equal pay for jobs of "comparable worth" will make the economic lot of many women worse, not better. Comparable worth will raise women's unemployment rates, reduce the rate at which women are entering predominantly male jobs, and reduce employment in predominantly female jobs.

- Although it would be a serious mistake to adopt comparable worth legislation, it would be an even more serious mistake to ignore what its proponents are saying: that pay in female-dominated jobs is artificially and unjustly low. The real question is how to tackle this problem, not whether it exists. Conventional antidiscrimination measures (e.g., Titles VII and IX of the Civil Rights Act) can raise pay in predominantly female jobs without giving rise to the adverse side-effects that would occur under a comparable worth policy. Serious thought should also be given to an unconventional antidiscrimination measure that may have great potential: vigorous enforcement and, if necessary, amendment of the antitrust laws to attack employment cartels that seriously disadvantage women workers.

1. Conceptual Flaws in the Concept of Comparable Worth

According to the comparable worth doctrine, two jobs are said to be "of comparable worth" if they are comparable in terms of skill (e.g., education and training requirements), effort, responsibility and working conditions. For example, if one must acquire more training in order to perform job A than job B, or if one experiences less pleasant working conditions while doing job A than job B, then job A might be said to "cost" more and therefore to be "worth" more than job B. How would this definition of comparable worth be made operational? The answer, according to almost all proponents of comparable worth who have adopted this definition, is to use job evaluations that award points to different jobs on the basis of characteristics (sometimes called "compensable factors") such as education and training requirements, working conditions and the like. A job's composite point score measures its "worth"; jobs with the same composite point score are "of comparable worth."

There has been rather little discussion of the nuts and bolts of how comparable worth would be implemented. However, there does seem to be agreement on two main points. First, comparable worth would be required of and applied to *individual* employers; no attempt would be made to engage in wage-setting on a uniform, economy-wide basis. Second, enforcement would focus on cases in which an employer pays lower wages to a predominantly female job than to a predominantly male job judged to be comparable, and would consist of requiring an increase in pay for the predominantly female job.[1]

With these definitional preliminaries out of the way, I now consider conceptual problems in the concept of comparable worth. In my view, comparable worth suffers from three basic conceptual flaws. First, the fundamental premise of comparable worth -- that jobs of comparable worth would, or should, receive the same pay if employers were gender-neutral -- is unfounded. A second fallacy is closely related to the first: although many employers are manifestly not gender-neutral, and although employer discrimination does indeed distort the way in which labor market supplies and demands determine wages for different jobs, the proponents of comparable worth are wrong in thinking that the solution to such problems is to set wages for different jobs without reference to the operation of supply and demand. Third, to an appreciable extent, the concentration of women workers in low wage jobs -- the central problem that comparable worth seeks to address -- may be attributable to factors *other than* employer discrimination.

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[1] Various details are left unspecified. For example, suppose two jobs are paid different wages and are judged to be of comparable worth, but females constitute the same percentage of the incumbents in each job: would comparable worth require a rise in pay for the job with the lower wage? Likewise, if job A has a greater proportion of minority workers and a smaller proportion of female workers than does job B, and if job A is found to be comparable to but lower-paid than job B, would comparable worth require a rise in pay for job A? Finally, if A and B are judged comparable but both pay *and* the proportion female are lower in A than in B, would comparable worth require a rise in pay for job A?

A. Does the Central Premise of Comparable Worth Make Sense?

The basic conceptual flaw in comparable worth is its central premise: that jobs of "comparable worth" would (or should) receive the same wage. In general, that would not (or should not) occur even if all employers were gender-blind.

The basic reason for this is simple. Individuals' tastes and preferences differ; "comparability" is in the eye of the beholder. Suppose that a given individual considers jobs A and B to be comparable (i.e., would have no preference for one over the other if they both paid the same wage). Is there any reason to suppose that all other individuals would feel just the same way? Would it be at all surprising if, at given wages, some individuals *preferred* A to B while, at the same time, other persons preferred B to A? Obviously not. Thus, even if the two jobs are "comparable" according to a formal job evaluation scheme, there is no reason to suppose that *all* individuals will in fact view them as "comparable." There is likewise no reason to suppose that supplies and demands for the two jobs would be equal if the two jobs paid the same wage. Hence, there is no reason to suppose that jobs that are "comparable" in the eyes of a given individual or job-evaluation firm would in fact pay the same wage -- even in a gender-neutral labor market.

To see this point in concrete terms, consider the following example, provided by Sharon Smith[8] (see Gold, 1983, pp. 43-4): an employer asks us to evaluate the comparability of the jobs of Spanish-English translator and French-English translator. A priori, it would seem difficult to argue that either of these two jobs requires more skill, effort or responsibility than the other; and it would be surprising if, at a given firm, the working conditions for the two jobs were appreciably different. Presumably, then, most job-evaluation schemes would rate the two jobs as comparable. If so, comparable worth would require the employer to pay the same wage to persons in each of the two jobs.

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[8] A labor economist, author of *Equal Pay in the Public Sector: Fact or Fantasy* (Princeton, N. J.: Industrial Relations Section, Princeton University, 1977), now employed at the Federal Reserve Bank of New York.

Would such a requirement make sense? Perhaps; but now suppose we learn that the employer in question is located in Miami. Would it be reasonable to expect that, in the absence of such a requirement, Spanish-English translators in Miami would get the same pay as French-English translators in Miami, even if the employer were entirely gender-blind? Almost certainly not. Would it even be possible to predict which job would receive the higher wage? Again, almost certainly not. True, one would expect that, in Miami, the supply of qualified Spanish-English translators would be greater than the supply of qualified French-English translators. Other things being equal, that would mean that the latter job would pay more than the former. However, Miami's demand for Spanish-English translators might well be greater than its demand for French-English translators. Other things being equal, that would mean that the latter job would pay less than the former.

To put the point somewhat differently, suppose that, at the moment, the French-English translator job is paid less than the Spanish-English translator job and that the proportion female in the former exceeds the proportion female in the latter. If the firm were required to reduce pay in the "male" Spanish-English translator job to the level it pays persons in the "female" French-English translator job, it would begin to have difficulty attracting applicants for (or retaining employees in) the former. If the firm were required to raise pay in the "female" French-English translator job to equal the level prevailing for the better-paid "male" Spanish-English translator job, it would have little trouble attracting applicants for (or retaining incumbents in) that job. However, it would also experience an increase in labor costs. As noted in Section 2 below, that will tend to reduce the firm's ability to employ not only French-English translators, but Spanish-English translators as well.

I want to emphasize that this certainly does not mean that determination of wages by market supplies and demands is inherently "just," "equitable," "desirable," etc. In particular, market demands may be affected by discrimination, employer wage-fixing agreements and the like.[3] The point is not that the determination of wages by market supplies and demands should be regarded as sacred, but rather that one ignores the fact of wage determination by supply and demand at one's peril.

In sum, even when employers are gender-blind, wages are determined by market supplies and demands rather than by "worth" -- which may have little or nothing to do with wage determination.[4] The reason is that supplies and demands summarize the tastes and preferences of all individuals, whereas "job worth" merely indicates the tastes and preferences of one individual or of a single entity (e.g., a job-evaluation firm). Even if you and I can agree that two jobs are "comparable," does that necessarily mean that everyone else in the economy will too? If not, there is no reason to expect that they would pay the same wage, even if all employers are entirely gender-neutral.

Similarly, there is no reason to believe that non-"comparable" jobs would necessarily receive different wages. For example, police work is generally regarded as arduous and dangerous, and it would hardly be surprising if, in recognition of this, a job evaluation were to award more job evaluation points to police work than to clerical work. Under a comparable worth standard, then, police work might well be entitled to a higher rate of pay than many kinds of clerical work. But would such a pay differential really be necessary? If enough individuals think of police work as exciting and regard clerical work as dull, it would be possible to fill all police jobs without paying any wage premium at all. In such a case, comparable worth would serve to justify and protect the practice of paying premium wages to police work -- a job still held mostly by men -- despite the absence of a market justification for such a differential.[8]

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[3] Likewise, market supplies may be affected by collective bargaining, discrimination in the school system, etc.

[4] A difficulty with the translators example is that one must assume that the two jobs would in fact be found comparable. Although plausible, this assumption is still only an assumption. However, the real world provides illustrations of the same point. For example, Gold (1983, pp. 48-9) reports the results of a 1976 job evaluation undertaken for the State of Washington. The job of Park Ranger received 181 evaluation points, whereas the job of Homemaker I received 182 evaluation points. But would these two supposedly "comparable" jobs necessarily receive the same pay, even if gender were altogether irrelevant to employer behavior?

Having said this much, I also want to stress that the conceptual flaw in comparable worth has nothing to do with the alleged ease or difficulty of comparing apples and oranges (which, for reasons best known to themselves, both proponents and opponents of comparable worth have pondered at great length). On the one hand, we compare apples and oranges, and tree-trimmer jobs and nursing jobs, all the time using the measuring-rod of money. On the other hand, the idea that a nutritional evaluation of apples and oranges or a job evaluation of tree-trimming and nursing will have anything useful to say about the behavior of a properly functioning market -- for fruit or for labor -- is sadly mistaken.

Would anyone seriously expect that apples and oranges would sell for the same price even if they did indeed have the same nutritional, caloric, etc., content? This question is not entirely rhetorical. At recent hearings on comparable worth (Committee on Post Office and Civil Service, 1983, p. 69), Nancy D. Perlman, Chair, National Committee on Pay Equity, argued the apples-

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[8] In this connection, the comments by Thomas R. Donahue, Secretary-Treasurer of the American Federation of Labor and Congress of Industrial Organizations, at recent hearings on comparable worth (Committee on Post Office and Civil Service, 1983, p. 184) are worth underlining: "We in the labor movement have long had an often bitter experience with job evaluation. We know that typically such evaluations have biasing factors built in; we know that the standard job evaluation schemes were created not in the interest of serving some abstract justice, surely not in the interest of the workers, but to justify the pay practices of the employers." Donahue -- whose organization has endorsed the general principle of comparable worth -- went on to add that, "at the same time, experience shows too, that where both management and labor agree on using job evaluation, the product will be less biased and may be of real value to the parties and consequently to the employees involved." All in all, this is a less than ringing endorsement of job evaluation. Moreover, the assertion that collective bargaining may lead to "less biased" job evaluations will hardly reassure those workers who are not covered by collective bargaining agreements -- who constitute about 80 percent of the total U. S. work force.

and-oranges question as follows:

> It is true that any particular apple may not be equal to any particular orange...But there are general characteristics of fruit such as the number of calories, the vitamin and mineral content which make it possible to compare specific apples with specific oranges. In some of these ways, nutritional value for example, the apples and oranges may be equivalent. In the same way, dissimilar jobs may not be identical but may be comprised of tasks and characteristics that are equivalent or comparable. Job evaluation systems analyze jobs in terms of prerequisites, tasks and responsibilities in order to determine wages. The comparable worth issue emphasize[s] the need to design job evaluation systems that are free from sex bias. Systems, if you will, that will pay the orange and the apple equally for giving us the same amount of energy. Systems which will not pay the orange less than the apple because it is not red.

It is impossible to be certain, but it seems likely that orange-growers would have difficulty persuading Congress to peg orange prices at a level equal to apple prices even if the two fruits were found to have same nutritional, caloric, etc., content. The case for comparable worth is equally specious. In both examples, the fallacy is the same. Unless all consumers regard apples and oranges as comparable, there is simply no reason to expect that both fruits would fetch the same price, even if all consumers were color-blind. Likewise, unless all workers regard tree-trimming and nursing as comparable, there is no basis for supposing that both jobs would pay the same wage, even if all employers were gender-blind. Unless all individuals have identical tastes and preferences among jobs, the notion that assessments of the "comparability" of jobs provide useful information about pay is simply erroneous.[6] When tastes are heterogeneous, jobs not only do not have any intrinsic absolute "worth"; they do not even have any intrinsic relative "worth."

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[6] The skeptic may ask: If the usefulness of job evalua[illegible] is limited or nonexistent, why do firms undertake them? One answer is that such evaluations at least provide a starting point for use in setting wages, even if one might later on want to depart from the wage rates implied by the evaluations in order to respond to shortages or oversupplies of applicants for different jobs. Indeed, some job evaluations attempt to add a "market factor" to the evaluation-points awarded for skill, effort, responsibility, etc. This is simply an attempt to guess at the shortages or surpluses that would develop if wages were set only on the basis of skill, effort, responsibility and working conditions -- and to adjust wages accordingly.

B. Can the Market Be Ignored?

As just noted, there is no reason why the operation of supplies and demands in a completely gender-neutral labor market would necessarily generate either equal pay for jobs of comparable worth or different pay for jobs of different "worth." To many advocates of comparable worth, however, this is all quite beside the point. Isn't it true, they ask, that many employers in the real world labor market are manifestly not gender-neutral; and isn't it true that employer discrimination distorts the way in which supplies and demands in the real world labor market determine wages for different jobs?

The answer to these questions is an unequivocal yes. But the conclusion that comparable worth advocates draw from these premises -- that the solution to such problems is to devise a standard for wage determination that is independent of the operation of supply and demand -- is unambiguously erroneous. Indeed, this conclusion betrays a fundamental misunderstanding of how the real world labor market operates and how employer discrimination harms women.

To the economist, gender discrimination by an employer amounts to an employer preference for having a man rather than an equally qualified woman in any given high wage job. In a situation of this kind, employers act as if men produced not only actual output -- steel, legal services, tree-trimming -- but also an intangible that may be called "maleness." Relative to a nondiscriminatory environment, discriminatory employers' demands for men for high wage jobs are higher and their demands for women for such jobs are lower. Some women will therefore tend to be excluded from high wage jobs; moreover, those women who are (still) able to get work in such jobs will earn less than equally qualified men (because women in such jobs are rewarded only for the output they produce, whereas men are rewarded not only for their contribution to output but also for being men). Thus, employer discrimination leads to unequal pay for equal work and to exclusion from (or reduced access to) high wage jobs. Finally -- and of central concern to the advocates of comparable worth -- these aspects of employer discrimination have further, indirect, consequences: faced with fewer opportunities for work at high wages, many women crowd into low wage jobs. The result is a greater concentration of women in low wage jobs, and a wider gap between high and low wage jobs, than would exist in the absence of such discrimination.

Thus, comparable worth advocates are quite right to reject the arguments of discriminatory employers who try to justify their existing wage levels by appealing to "market realities." However, comparable worth advocates are entirely wrong in thinking that the economic lot of women can be improved merely by attacking one of the symptoms of employer discrimination -- the artificially widened gap between high and low wage jobs -- while leaving employers free to exclude women from high wage jobs.

To see why, suppose that literally all of the difference in pay between high and low wage jobs is the indirect result of employer discrimination (even though, as noted already, this is quite unlikely to be the case). Even in this setting, fixing wages without reference to the functioning of supplies and demands in the labor market, as comparable worth would do, would be a grave error. In a sense, the problem with labor markets in which employer demands are affected by discrimination is not that such markets do not function, but rather that they function all too well. Imposing comparable worth on discriminatory employers will not end their exclusionary practices; it will simply cause exclusion to pop up in different guises. Merely requiring discriminatory employers to raise pay in low wage jobs, without also requiring them to give equal access to high wage jobs to equally qualified men and women, will simply reduce employment opportunities in low wage jobs without increasing employment opportunities elsewhere. As explained in Section 2, this will make the economic lot of many women (in low and high wage jobs) worse, not better.

C. Is Employer Discrimination the Whole Story?

The central problem that motivates many comparable worth advocates is that women have been and remain heavily concentrated in a relatively small number of low wage jobs. Many comparable worth advocates appear to want to make employers bear the full burden of addressing this problem. However, employer discrimination is not the only reason (though it is certainly a very important reason) why low wage jobs are usually predominantly female and vice versa.

The National Academy of Sciences/National Research Council Report on comparable worth (Treiman and Hartmann, eds., 1981, p. 53) -- which, it should be noted, endorsed the general concept -- provides an admirable summary of many of the reasons why women may be overrepresented in low wage jobs:

> First, women may be socialized to believe that some types of jobs are appropriate and that others are inappropriate for women; socialization may be so effective that for some women that it never even occurs to them to consider other types of jobs. Second, women may have pursued courses of study they thought particularly appropriate to women and in consequence may not have the education or training that would suit them for other available jobs. Third, women may lack information about other available jobs, their pay rates, working conditions and access to them. Fourth, women may be aware of alternatives, but because of actual or expected family obligations may structure their labor force participation in particular ways [that reduce their earnings possibilities]. For example, they may be unwilling to invest a great deal of time, effort or money in preparing for jobs because they do not expect to remain in the labor force after marriage or after childbearing... Fifth, women may be aware of alternative types of jobs but believe them to be unavailable or unpleasant because of discrimination; their labor market preparation and behavior may be affected in many ways by this perception: the course of study they take; the time, money, and effort invested in training; their willingness to accept promotion, etc.

For example, Polachek (1978) investigated the college majors of young men and women. As one might expect, his data showed considerable gender differences in college majors: business and engineering, among the young men; education, home economics and medically related fields such as nursing, among the young women. What is striking and rather unexpected is that these differences persist even after statistical adjustment for such factors as Scholastic Aptitute Test (SAT) verbal and mathematical scores and a set of attitudinal variables (measuring, e.g., individuals' assessments of the lifetime importance, to them, of steady work, money and friends). That is, young men and young women tend to choose different college majors, even when other things (abilities and attitudes) *are the same.*

Similarly, in analyzing a large travel and insurance services company, John Abowd (Graduate School of Business, University of Chicago) and I found substantial male-female differences in the nature of the work experience that these employees possessed at hire (Abowd and Killingsworth, 1983). For example, among employees with no more than a high school education, 39 percent of the men but only 25.7 percent of the women had prior experience in managerial, professional, technical or sales occupations (analogous figures for male and female employees with some college education are 56.3 percent and 29.9 percent, respectively). Likewise, among employees with no more than a high school education, 60.6 percent of the women but only 19.5 percent of the men had prior experience in clerical jobs (the figures are 46.3 and 21.6 percent, respectively, for female and male employees with some college education).

If factors such as these are important determinants of one's current occupation and earnings, one would expect that male-female differences in such factors would explain an important fraction of the overall male-female pay gap. As David Bloom (Department of Economics, Harvard University) and I have noted (Bloom and Killingsworth, 1982), many empirical analyses of the pay gap suffer from potentially important methodological problems. This caveat notwithstanding, it would be fair to say that such analyses provide credible evidence that as much as half (or even more) of the pay gap between men and women can be attributed to factors *other than* discrimination by the firms that currently employ them, including such things as the level and type of educational attainment; the total amount, occupational characteristics of and discontinuities in prior work experience; etc. For example, Abowd and I found that factors such as these, *rather than* employer discrimination, were responsible for a male-female difference in pay of about $60 *per week* at the company we were analyzing (Abowd and Killingsworth, 1983, esp. p. 390).

I want to emphasize that these remarks should in no sense be interpreted as an attempt to "blame the victim," and that discussion of gender differences in "choice" of college major, work career, etc., need not (and in this case does not) entail the assumption that such "choice" is "free." As all economists realize, the essence of choice is constraints, including constraints that individual decisionmakers may bear quite unwillingly. For example, socialization within the family, rather than any inherent gender-related attitudinal difference, may explain most or all gender-related differences in career choices. Likewise, discrimination in the educational system -- from grade school to graduate school -- rather than innate preferences of women may account for most or all gender-related differences in both the level and type of educational attainment.

Finally, it should be noted that, whether free or not, women's "choices" simply do not account for literally all of the male-female pay gap, even if they do account for a substantial portion thereof. For example, at the company we analyzed, Abowd and I found that although "choices" (in the sense just given) accounted for about $60 of the total male-female weekly pay gap, there remained a difference in pay of about $240 per week between men and women who were the same in terms of the factors considered in our analyses. These factors included age, years of company service, educational attainment, years elapsed since completion of education, total work experience, years elapsed since start of first job ever held, number of previous jobs held, duration of prior jobs held, military service, discontinuity of work history, and the amount, timing and nature (i.e., occupational and industrial category) of prior work experience. (See Abowd and Killingsworth, 1983, pp. 389-90.)

In sum, one cannot dispose of the problem of the concentration of women in low wage occupations by treating it as the natural and entirely benign consequence of "choices." Employer discrimination is indeed an important source of wage differences between men and women. However, it is equally important to note that choices made by women, rather than discrimination practiced by the firms currently employing them, are an important source of the pay gap and of the concentration of women in low wage occupations. In focusing exclusively on the pay practices of employers, comparable worth simply ignores this aspect of women's economic disadvantage altogether. To the extent -- which in most empirical analyses has been found to be considerable -- that factors other than current employer discrimination are responsible for women's economic disadvantage, comparable worth is entirely misdirected. Effort devoted to legislation and enforcement of a comparable worth pay standard is effort diverted from legislation and enforcement of other antidiscrimination measures, both inside the labor market and elsewhere (e.g., in school systems).

As an example of the misdirection of comparable worth, it is instructive to consider some recent remarks of Congresswoman Patricia Schroeder (Committee on Post Office and Civil Service, 1983, p. 349):

> One of my first cases as a lawyer was against a medical school with a young woman who had two small children, her husband had died and left her. She wanted to get into medical school and had very high grades. They said, "No, you should stay home and take care of the children." She said, "That is an option I don't happen to have. The question is whether I take care of them at a doctor's profession or whether I continue on at a nurses' level," which was the education that she had at the time. The question is, How do you raise the pay of the nurses' profession so that it is fair and so that people don't have to get through those kinds of considerations? I guess that is [one] of the real challenges.

Congresswoman Schroeder has drawn precisely the wrong conclusion from this experience. The real problem is to remove the artificial barriers and constraints that inhibit women such as her client, not how to implement a distinctly second-best strategy that entails tacit acceptance of such barriers.

Of course, if raising pay in jobs that women now hold (instead of breaking down barriers to entry into higher-paid occupations) would in fact produce substantial economic benefits for women, then the conceptual objections to comparable worth that have been noted in this section might well go by the board. Unfortunately, as I now explain, comparable worth will also inflict real economic harm on substantial numbers of women.

2. Adverse Economic Effects of Comparable Worth

In this section, I discuss both what economic analysis predicts and what empirical studies have found regarding the economic consequences of comparable worth. This discussion may be summarized as follows: the available empirical evidence strongly confirms the predictions of economic analysis. Although introducing comparable worth will certainly raise wages in predominantly female jobs, it will also reduce employment and raise unemployment rates for women. At best, comparable worth will prove a decidedly mixed blessing.

A. Economic Effects of Comparable Worth: Economic Analysis

To analyze the likely economic effects of comparable worth (including, in particular, its impact on labor market opportunities for women), I have constructed a formal general equilibrium model of labor market supplies and demands for two different jobs: a high wage job, "B," and a low wage job, "A." I have explicitly assumed that employers discriminate in favor of men, in the sense that they would be willing to pay men doing job B more than they would pay women. In consequence, women tend to be underrepresented in the high wage job, B, and overrepresented in the low wage job, A, relative to what would be observed if employers were nondiscriminatory ("gender-blind"). Both jobs have comparable requirements in terms of skill, effort and responsibility, and both have comparable working conditions. Details of the model and further discussion may be found in a paper (Killingsworth, 1983) that I prepared for a National Academy of Sciences/National Research Council seminar on comparable worth research; what follows is a brief but, I hope, reasonably comprehensive summary.

If comparable worth were applied to a labor market of this kind, employers would be required to raise pay in the low paid, predominantly female job, A. The benefits of increasing the wage for job A are obvious: the A wage will rise both in absolute terms and, of perhaps equal significance, relative to wages (of both men and women)[7] in the high wage job, B. In other words, not only will the comparable worth policy raise wages in low wage jobs; it will also narrow the pay gap between low and high wage jobs. In addition to these benefits, however, the policy also has costs. Although they are perhaps less obvious than its benefits, they are no less important.

First consider the consequences of comparable worth in the "short run," i.e., when the supplies of labor to the two jobs are essentially fixed. Since the A wage rises (because employers are required to pay the same wage to the two "comparable" jobs), firms' demands for A workers will fall, leading to unemployment for some workers now in job A -- who are disproportionately female. Second, the increase in the A wage raises labor costs and therefore prices; so consumers' demand falls. As consumers' demand falls, employers' output will contract, leading to decreases in the demand for job B (and, thus, to decreases in the demands for both male and female workers in job B).[8] In turn, the decline in the demand for job B will lead to unemployment and/or lower wages for both men and women initially in job B. In particular, because employers discriminate in favor of men, the wage of men in job B will fall by less than the wage of women in job B, thereby widening the gender differential in pay within job B.[9]

Now consider the effects of increasing the wage in job A in the "long run," i.e., allow for the fact that, given sufficient time, supplies of labor to the two jobs will adjust to the changed wages prevailing for those jobs. As in the short run case, the comparable worth policy will raise the A wage both absolutely and relative to the B wage (of men or women). However, in the long run as in the short run, it will also have several adverse side-effects.

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[7] Because employers are assumed to discriminate in favor of men in the high wage job, B, women who succeed in entering job B will be paid less than men in job B, i.e., there will be unequal pay for equal work as well as unequal access to different kinds of work. Thus, there are really two "job B wages" -- one for men, and one for women -- rather than one.

[8] This decrease in demand for workers to fill job B will be offset by an increase in the demand for such workers, to the extent that it is possible to substitute the work done by persons in job B for the work done by persons in job A. In the nature of the case, however, the scope for such substitution is likely to be rather small; for example, it is probably somewhat difficult to substitute the work done by tree-trimmers for the work done by nurses.

[9] In intuitive terms, this is because the comparable worth policy forces an increase in the A wage, so that the portion of the discrimination against women that used to show up as a reduced A wage will now show up as a wider male-female differential within job B.

First, as in the short run case, firms' demands for workers for job A will fall as the A wage rises. This will reduce employment of workers in job A, leading to unemployment for some individuals who would otherwise be in job A. (Since women are overrepresented in job A, this unemployment will hit women harder than men.) Second, the increase in the A wage *relative to* the wage for both men and women in job B attracts workers towards job A and away from job B.[14] This reduces employment of both men *and women* in job B. In the absence of any restraint on the A wage, this increase in the supply of labor to job A would drive the A wage back to its original level. However, the comparable worth policy prevents the A wage from falling; instead, the increased supply to job A turns into more unemployment. Finally, since total employment in job A declines and employment of both men and women in job B also declines, production drops. The drop in production leads to an increase in the price level.

One implication of this analysis is worth emphasizing, since it runs completely contrary to the notion, popular among some comparable worth advocates, that comparable worth will encourage men to enter predominantly female jobs by raising pay in such jobs. At best, this is a half-truth. To be sure, comparable worth will increase the number of men *who want to work* in female jobs (here, "job A"). But the wage increase that attracts men to such jobs will also reduce *employment opportunities* in such jobs, thereby reducing employment (of men, and of women) in such jobs. You can lead a horse to water, but what can you do if the well has gone dry?

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[14] That is, some workers now in job B will try to switch to job A, and some individuals now choosing a career will drop any plans they might have made to train for job B and will seek training for and employment in job A instead.

B. Economic Effects of Comparable Worth: Empirical Evidence

Are these predictions about the effects of comparable worth policies supported by empirical evidence? The U. S. has not implemented comparable worth to any considerable extent, but Australia's experience with its policy of enforcing "equal pay for work of equal value" is illuminating. Under the policy, which began in 1972, Australia's federal and state wage tribunals have set the same rate of pay (regardless of the gender of the majority of incumbents) for all jobs judged to be comparable in terms of skill, effort, responsibility and working conditions. The tribunals fix minimum rates (not actual levels) of pay and have considerable latitude in determining whether different jobs are in fact comparable (Gregory and Duncan, 1981, p. 408). These potential loopholes notwithstanding, Australia's comparable worth policy had a substantial effect on the aggregate female/male earnings ratio: that ratio (for fulltime nonmanagerial adult workers in the private sector) rose from .607 in 1971 to .766 in 1977 (Gregory and Duncan, 1981, p. 409). Given the gradual pace at which most social change typically occurs, a reduction of the pay gap of this magnitude in so short a time is truly remarkable.

For purposes of the present discussion, however, the most interesting aspect of Australia's experience is that the policy's side-effects appear to have been generally adverse, as implied by the above analysis. Gregory and Duncan (1981, p. 418) found that increases in women's wages attributable to the comparable worth policy reduced the rate of growth of female employment (below the rate that would otherwise have prevailed), relative to the rate of growth of men's employment, in (i) manufacturing, (ii) services and (iii) overall (i.e., in all industries combined). The comparable worth policy had a negligible effect on the relative employment growth rate of women only in the public authority and community services sector.

For the Australian economy as a whole, the Gregory-Duncan results imply that, as of 1977, the cumulative effects of comparable worth served to reduce women's relative employment growth by about 1.3 percentage points per year, on average and other things being equal. Now, the *actual* annual relative employment growth rate for women during 1972-7 was about 3.0 percentage points (that is, the annual rate of employment growth for women exceeded that for men by about 3.0 percentage points). Thus, the reduction attributable to comparable worth was about 1.3/4.3 = 0.30. In other words, Australia's comparable worth policy reduced the rate of growth of women's employment, relative to that of men, by almost one-third.[11] Moreover, these figures may understate the actual effect of comparable worth, because among the things Gregory and Duncan controlled for in deriving their results was the male unemployment rate (which, as indicated above, may also be affected by comparable worth policies).

Gregory and Duncan also analyzed the impact of the policy on the female unemployment rate. Again, their results indicate that comparable worth adversely affected labor market opportunities for women. For example, they report (1981, p. 425) that, according to their results, the cumulative impact as of 1973-4 of the wage tribunals' actions regarding relative wages of women was an increase in the female unemployment rate of 10 percent. Since the actual female unemployment rate in August 1974 was 3.5 percent, this means that in the absence of the wage tribunals' actions the female unemployment rate would have been between three- and four-tenths of a percentage point lower, i.e., would have been about 3.1 or 3.2 percent.

In sum, the Gregory-Duncan study indicates that Australia's "equal pay for work of equal value" policy adversely affected both the rate of relative employment growth for women and the female unemployment rate. The Australian experience does not necessarily provide an exact forecast of the consequences of introducing comparable worth in the U. S. However, it should certainly give pause to anyone who imagines that comparable worth will lead to an unambiguous improvement in the economic status of American women.

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[11] Without implying that he necessarily shares the opinions expressed in this testimony, I would like to thank Gregory for a most helpful discussion of the findings and implications of the Gregory-Duncan study.

Unfortunately, proponents of comparable worth in the U. S. are either unaware of the Australian experience or, worse yet, have drawn inferences from the Gregory-Duncan results that are precisely the opposite of the ones that are in fact warranted. For example, the National Academy of Sciences/National Research Council report on comparable worth (Treiman and Hartmann, eds., p. 67, n. 10) interprets the Gregory-Duncan findings this way:

> Gregory and Duncan (1981) investigated the relevance of labor market segmentation theory to Australia's recent efforts to increase the wages of occupations filled mainly by women. They suggest that the wage increases did not negatively affect the number of women employed, in part because many employers of women were sufficiently insulated from competitive market forces to absorb the higher costs.

Similarly, Eleanor Holmes Norton, former chair of the Equal Employment Opportunity Commission, recently testified as follows (Committee on Post Office and Civil Service, 1983, p. 44; emphasis added):

> During a 5-year period beginning in 1969, Australia removed explicit differentials for pay based on sex. Using a combination of first equal pay and then comparable pay principles, Australia reduced the pay gap between full-time male and female workers from 58 percent to 77 percent.
>
> There are differences between wage setting in the U. S. and Australia, including wage minimums for all occupations in Australia. But precisely because the Australian action affected the entire economy, it should be studied to see why dislocation and other disruptive economic changes regularly predicted when this subject is discussed here, did not occur there.

What accounts for the remarkable discrepancy between the actual findings in the Gregory-Duncan research and the conclusions that such U. S. observers have drawn from that research? Part of the answer is that Gregory and his colleagues (Gregory, 1980; Gregory and Duncan, 1981; Gregory, McMahan and Whittingham, 1983) have described their work in terms that, quite unintentionally, have seriously misled many of their readers. For example, in discussing his work before the Equal Employment Opportunity Commission, Gregory (1980, pp. 613-4) testified as follows:

> In response to such a change in the wages of females, relative to males, [occurring as a result of Australia's policies,] one would expect some employment consequences...In fact, our history has been, since 1969, up until the last 12 months at least, that employment of females in the market place has continued to grow faster than male employment.
>
> Furthermore, we have found that the unemployment of females relative to males has continued to fall, as it had been doing right throughout the sixties and seventies.

(For similar statements to this effect, see Gregory and Duncan, 1981, esp. pp. 426-7; and Gregory, McMahan and Whittingham, 1983, esp. pp. 32-3.)

In statements of this kind, Gregory et al. are referring to simple descriptive statistics on the behavior of women's (relative) employment levels or unemployment rates over time, not to their research findings on the other-things-being-equal impact of Australia's policy of "equal pay for work of equal value." In other words, in stating that women's relative employment levels did not fall and that women's relative unemployment rates did not rise after implementation of the policy, Gregory simply means that the graph of women's relative employment was rising (and that the graph of the relative female unemployment rate was falling) over time both before and after Australia's comparable worth policy took effect. However, that is of little or no value for understanding of whether the policy reduced women's employment or raised women's unemployment rates. To address that question, one must ask whether, in the absence of the policy, the graph of women's employment over time would have been higher or more steeply sloped. The answer to that question is affirmative. In other words, the Gregory-Duncan results imply that Australia's policy reduced the growth in women's relative employment (and raised the female unemployment rate) relative to what would have been observed in the absence of the policy.

It is worth noting that the Gregory-Duncan results also indicate that comparable worth had no appreciable effect on women's relative employment growth in the public authority and community service sector. In contrast with the private sector, the government sector will have little or difficulty -- at least in the short run -- in maintaining the demand for its "output" at existing levels despite policy-induced increases in labor costs. To cover the increased labor costs, government can (e.g.) simply compel the rest of the economy to pay higher taxes, keeping its real revenues unchanged. At least in the short run, then, declining demand for public sector output (and hence for public sector workers) is unlikely to be substantial. However, maintaining comparable worth in the public sector in the long run will necessarily require either higher taxes, or a larger deficit, or reductions in other expenditure categories.

In sum, both economic analysis and empirical research suggest that comparable worth will have serious adverse side-effects on women's employment and unemployment rates. Even in the absence of the conceptual defects noted in Section 1, these practical considerations provide strong arguments against comparable worth.

3. Are There Alternatives to Comparable Worth?

Rejecting comparable worth certainly does not dispose of the basic issues that have motivated many of the proponents of comparable worth. If comparable worth is not the answer to these problems, what is?

In this section, I first discuss conventional antidiscrimination measures aimed at ensuring equal pay for equal work and equal access to different kinds of work. To the extent that wages for different jobs do indeed adjust to changes in labor market supplies and demands, equal-pay and equal-access remedies will reduce the artificially widened gap between low and high wage jobs -- as comparable worth seeks to do -- *without* any of the adverse side-effects that comparable worth would entail.

There remains, however, the possibility that in some circumstances wages for different jobs will *not* adjust to changes in labor market supplies and demands. This suggests a second and quite unconventional kind of antidiscrimination remedy that may have great potential: vigorous enforcement and, if necessary, amendment of the antitrust laws to attack employer cartels that seriously disadvantage women workers.

A. Equal-Pay and Equal-Access Remedies

The essential difference between comparable worth and conventional antidiscrimination measures is very simple. Conventional antidiscrimination measures make it costly for employers to treat equally qualified men and women differently. Comparable worth makes it costly for employers to employ low wage labor. As shown in Section 2, comparable worth "solves" the problem of the artificially wide gap between low wage predominantly female jobs and high wage predominantly male jobs only to create others, including, in particular, reduced opportunities for women in both low *and* high wage jobs. In contrast, conventional antidiscrimination measures compel discriminatory employers to provide greater opportunities for women workers (by making it costly for such employers to deny equal pay or equal access to women with the same skills and qualifications as men).

To the extent that conventional antidiscrimination measures are actually implemented, the wages of women rise for three distinct reasons. Two of these are obvious. Equal pay requirements raise the wages of women *within given jobs*, and equal access requirements make it possible for qualified women to switch *from* low wage *to* high wage jobs. A third reason is more subtle: *to the extent that wages respond to changes in supplies and demands* (a matter to which I will return presently), the fact that some women are able to leave low wage jobs for high wage jobs will reduce supply to the low wage jobs, leading to wage increases *for low wage jobs.*

Nor do conventional antidiscrimination measures lead to the kinds of adverse side-effects that are fostered by comparable worth. True, each type of antidiscrimination remedy makes certain forms of behavior more costly. But whereas comparable worth makes it more costly *to employ low wage labor,* conventional antidiscrimination measures make it more costly *to treat equally qualified men and women differently.* In particular, such measures in effect force employers to incur costs (back pay, front pay, etc.) whenever they do not treat equally qualified men and women as equals. Depending on how stringent these requirements are and how vigorously they are enforced, the pecuniary costs they impose on employers will offset the nonpecuniary or intangible factor of "maleness" that makes discriminatory employers want to treat equally qualified men and women differently. In consequence, stringent conventional antidiscrimination measures, stringently applied, will reverse all of the effects of employer discrimination described earlier.[12] The dismal equations of discrimination can be worked backwards as well as forwards.[13]

B. Antitrust Laws and the Problem of Employer Cartels

As noted earlier, conventional antidiscrimination measures can be expected to raise pay in low wage predominantly female jobs (as well as providing higher pay in given jobs through equal-pay provisions, and permitting qualified women to leave low wage jobs for high wage jobs) *if* pay in such low wage jobs responds to the changes in demand and, in particular, supply that will be set in motion by antidiscrimination measures. However, as many supporters of comparable worth have been quick to point out, that does not always happen: shortages in low wage jobs, particularly in predominantly female low wage jobs, do not always lead to higher wages for such jobs.

Many comparable worth advocates point to nursing as a particularly dramatic example of the failure of wages to respond to supply and demand.[14] For example,

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[12] To the extent that such measures are not stringently enforced, and to the extent that litigation and enforcement are difficult and expensive, the impact of antidiscrimination measures will obviously be reduced. However, do comparable worth advocates really imagine that an unsympathetic administration would be more likely to enforce comparable worth than conventional antidiscrimination measures, or that it would be easier and less expensive to litigate and enforce comparable worth than equal-pay and equal-access requirements?

[13] For a formal derivation of the propositions argued here in intuitive and heuristic terms, see Johnson and Welch (1976).

[14] In the interest of full disclosure, I feel obliged to state that I have been retained by the American Nurses' Association (ANA) to serve as a consultant in connection with possible litigation concerning wage discrimination. At the same time, I want to emphasize that the opinions expressed in this testimony are entirely my own. They have not been reviewed or approved by the ANA, any other organization or any individual.

Winn Newman, a lawyer who is widely regarded as a leading advocate of comparable worth and who has represented plaintiffs in a number of comparable worth cases before the courts, recently testified as follows (Committee on Post Office and Civil Service, 1983, p. 148; emphasis original):

> Supply and demand does not work for traditionally female jobs. The well known and long-time shortage of nurses in this grossly underpaid profession vividly demonstrates that *supply and demand appear to have little effect on the wages of female-dominated professions.* For example, at St. Luke's Hospital in Milwaukee, Wisconsin, a severe shortage of nurses did not inspire any increase in wages. Instead, the hospital appropriated a large sum of money for recruitment of nurses from England, Scotland and Ireland. A search committee was authorized to travel to these countries and to engage in an expensive advertising program for nurses.
>
> The Immigration and Naturalization Service was persuaded to grant special exceptions to permit the nurses to enter and work in this country. The hospital did *not* offer the foreign nurses more money, allegedly because it did not wish to disrupt "the domestic labor market." The same pattern has been repeated in Little Rock, Dallas and other cities.

Thus, although wages in nursing are said to be low, hospitals and other employers of nurses are said to suffer from severe shortages. Yet these shortages are alleged not to have led to wage increases for nurses; about all that has happened is a stepup in recruiting efforts, either of foreign nurses (as in Newman's discussion) or via one-time-only inducements (a year's country club membership, a few months' paid rent, etc.) for first-time domestic recruits. Unfortunately, most comparable worth advocates have simply pointed out the seeming paradox inherent in situations of this kind, without asking how and why such situations could have arisen or what can be done about them.

The paradox begins to make sense, however, once one considers the possibility that markets for some kinds of predominantly female jobs (e.g., nursing) have been cartelized -- that, for example, hospitals and other large employers of nurses in major metropolitan areas have agreed not to compete with each other by offering higher wages to attract nurses. In effect, such cartelization amounts to a set of informal or formal area-wide wage-fixing agreements. If this accurately describes the labor market for nurses, then it explains not only the alleged low pay of nurses, but also the alleged shortages of nurses, the failure of nurses' wages to rise and the almost exclusive reliance on non-wage forms of competition for new recruits. With wages held at an artificially low level, it is not surprising that individual hospitals would like more nurses than they are able to attract (i.e., face "shortages"); that individual hospitals do not raise pay in an attempt to attract more nurses; or that competition in the nursing market takes the form of foreign recruitment, one-time-only signup bonuses, etc., rather than higher wages -- just as competition in air travel centered on non-price matters (seating, food, etc.) when air fares were regulated.

Is there any evidence (as opposed to mere conjecture) that markets for nurses and other predominantly female jobs have in fact been cartelized? The nursing labor market is quite literally a textbook example of a cartelized (or, in economic jargon, "monopsonized") labor market (Hurd, 1973; Link and Landon, 1975; Ehrenberg and Smith, 1982, pp. 65-6). For example, Devine (1969, p. 542) declares flatly:

> Nurses' wage rates are set by collusive agreement among private hospitals in Los Angeles. Most private hospitals belong to the Hospital Council of Sourthern California, which establishes wage rates based on the recommendations of the personnel consulting firm of Griffenhagen-Kroeger, Inc. In a 1962 report to the council, this firm urged members to subscribe formally to an apparently effective unwritten agreement to avoid attempting to hire employees of other members, and to refrain from offering better salaries, benefits, or more rapid advancement to employees seeking to change jobs [references omitted].

According to one witness at recent Congressional hearings, hospital administrators in Denver have also colluded to fix wages.[18] Similarly, another witness testified that employers of clerical workers in cities such as Boston and San Francisco have formed organizations, euphemistically known as consortia or study groups, whose true purpose is to engage in wage-fixing, in much the same way that producer cartels engage in collusive price-fixing. (See Committee on Post Office and Civil Service, 1983, pp. 88, 96.)

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[18] See Committee on Post Office and Civil Service (1983, p. 70). According to another witness, the emergence of a shortage of graduate nurses in Denver, coupled with union organization, recently led to rapid increases in nurses' salaries there. (See Committee on Post Office and Civil Service, 1983, p. 706.) Whether pay would have increased in the absence of the unionization is unclear, however.

To the extent that labor markets are indeed cartelized -- and I should emphasize that this is something about which, in general, there is very little hard evidence -- then forcing wage increases in such markets need not have any adverse impact on employment. However, none of this has anything to do with whether the jobs in question are "comparable" to predominantly male jobs, be they pharmacists, tree-trimmers or parking-lot attendants. Indeed, raising wages in cartelized predominantly female jobs to a level above the one that would prevail in the absence of cartelization will reduce employment in such jobs, whether or not the higher wage level exceeds or is below the level prevailing in supposedly comparable predominantly male jobs.

What the possibility of labor market wage-fixing -- cartelization -- does suggest is the advisability of a remedy that is quite different from both conventional antidiscrimination measures and comparable worth: enforcement and, if need be, amendment of the antitrust laws to ensure that employers cannot collude to depress wages. The existence and importance of cartelization merits serious study by researchers. Use of the antitrust laws as a remedy for discriminatory wage fixing deserves serious consideration by legislators and litigators.

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Representative **Snowe**. I want to thank you both very much for your thought-provoking statements and I'd like to ask several questions.

Mr. Lindsay and Mr. Killingsworth, first of all, I'd just like to establish, do either of you or both of you agree or disagree that sex-based wage discrimination exists in the marketplace?

Mr. **Killingsworth**. To me, it depends on how you define discrimination. If by that you mean do people with identical qualifications wind up with very different rates of pay, promotions, and so forth, and have the same sex, my answer to that is "Yes."

Representative **Snowe**. But you're talking about equal pay for equal work?

Mr. **Killingsworth**. No. I'm talking about equal pay for equal people, people who have the same characteristics, the same types, the——

Representative **Snowe**. Same skills, same experience, same education——

Mr. **Killingsworth**. And also none, no experience as a form of prior experience.

Representative **Snowe**. And you, Mr. Lindsay?

Mr. **Lindsay**. I am convinced that discrimination is rampant in the economy, but I think it's important to make a distinction between the existence of discrimination and whether that discrimination has effects on the wages of women. I don't think that the evidence indicates that. I haven't seen any evidence that I find convincing that wage effects of discrimination are present in the wage structure that we observe and, secondly, as I mentioned in my formal statement, there's no theoretical mechanism that would generate wage differences for men and women.

As I said, when employers are prejudiced, the result you get in that sort of a model is a segregation of work—women over here working for one employer or set of employers and earning whatever they're worth there, and men working over here for the prejudiced employers. Unless there's some sort of massive conspiracy on the part of all employers to keep the wages of women down, I don't see a mechanism that will produce that.

Representative **Snowe**. You probably heard the testimony this morning of Ms. Hartmann from the National Academy of Sciences indicating in their report that indeed there was discrimination and that the fact of wage discrimination existing in the marketplace.

Mr. **Lindsay**. Yes.

Representative **Snowe**. Do you agree or disagree with that report?

Mr. **Lindsay**. I disagree very strongly with that report.

Representative **Snowe**. Would you say there's no basis or what?

Mr. **Lindsay**. Well, there are different interpretations that, of course, one can read off the same data, the same set of studies. I've read the studies that have been surveyed in the NAS report. There are a lot of studies that were performed that were not surveyed in the NAS report which came to different conclusions. I simply disagree with it.

I think it's certainly true that there's an unexplained residual, that when you put in experience and education and put in occupation you can't explain about half of the existing pay gap, but as I said, there are other things that you can explain it with—this job atrophy explanation that Sol Polachek advanced explains part of it. Elizabeth Landis did a study in which she explained the entire wage gap between men and women was due to the turnover rate. The statistical artifact explanation I think is compelling.

The existence of a pay gap, as I said, is not proof that there is discrimination; it's evidence that there's a wage difference.

Representative SNOWE. And that would not be classified as discrimination?

Mr. LINDSAY. It could be classified as any number of things. That's the point.

Representative SNOWE. Well, how is it then that the average educational level among year-round full-time male workers is 12.1 years the same as for women. Women with college education earn less than men who have only high school education. Women with high school education earn less than men who have never completed elementary school. A secretary with 18 years of experience earns less than a parking lot attendant. Liquor store clerks with only high school education and 2 years' experience earn more than teachers with a B.A. and specialized training and 2 years' experience. Nurses earn less than sign painters. In one California hospital a job evaluation study revealed that a registered nurse earned only $7.90 an hour while the maintenance worker with no experience earned $11.53 an hour.

If we can justify this kind of wage structure, then we are in effect saying that women should forgo professional training and education and pursue other jobs such as has been suggested. How would you explain that? I would like to hear from both of you.

Mr. LINDSAY. Well, let me say this, that in these wage studies, Ron Mahoka did perhaps the first and most comprehensive of these studies, in which he had about 40 different variables, not only education and experience but he had region, the size of the town that the worker was employed in, and he attempted to explain the variation of wages of white men—he did it for all races and sexes—but he was able to explain only a third of the variation in white men's wages on the basis of these variables.

The market produces a lot of variation in wages which we can't explain when you're looking only at white men, so there's no possibility of discrimination affecting those wages at all, and you can still only explain about a third of the variance in men's wages.

Representative SNOWE. Mr. Killingsworth.

Mr. KILLINGSWORTH. Well, I think there's a distinction to be made here between differentials or differences and discrimination. Discrimination clearly leads to a difference, but not all differences are the result of discrimination. Let me give an illustration of what I mean.

Reference has been made to the so-called atrophy hypothesis which is related to the willingness of women to acquire work experience in valuable occupations. Well, in fact, a colleague of mine and I tested that, among other things, in a study that I mentioned very briefly in my prepared testimony and, among other things, we found at least the company we were studying, not necessarily the whole economy—but in the company we were studying, the atrophy hypothesis just didn't account for what was going on at all. In fact, if you believed in the atrophy hypothesis about the impact of future dropping out of the labor force, future intermittency, then the women behaved more like the way the theory predicted than the men. They behaved more like the men I guess than the men actually did by the lights of the theory. In other words, you wouldn't have known if you hadn't labeled the results by sex that it was in fact the women who were behaving in this way if you could believe the theory and hadn't known the gender of the people.

On the other hand, not all differences—and incidentally, the difference in pay at that company after correction for a quite long list—I think we got up to 150 variables or thereabouts—was about $240 per week difference between men and women who were identical in terms of the factors which were considered.

I think that although there may be some residual unexplained amount that isn't attributable to discrimination, I don't hesitate in saying that's discrimination based on gender.

On the other hand, not all differences are a product of discrimination. I have studied a different employer, a major metropolitan newspaper that says it prints suitable news, if I may modify their motto—and for a recently hired cohort of people, there was absolutely no difference in pay at all between men and women who were the same in terms of the same sorts of factors that economists consider. There was what people call a raw or unadjusted difference, but literally all of that could be accounted for in terms of things like educational preparation, prior work experience and other sorts of factors that were literally beyond the control of this particular newspaper, that could not in any way be pinned on the behavior of that newspaper.

So I think it is important to recognize that many employers discriminate, but not all do. And the ones we see in court are the ones that in some sense may have been most egregious about it because they are in fact the ones that got hauled into court.

Representative Snowe. Mr. Lindsay, you wrote an article published in the Supreme Court Economic Review in 1982 that the wage gap results not from discrimination against women but from favoritism toward men. Is that not a form of discrimination or were you suggesting that we should reduce the wages for men in those areas where it appears that favoritism does exist?

Mr. Lindsay. Well, what I had reference to in the paper you are citing there was that if discrimination were going to have wage rate effects, if discrimination were going to produce a wage gap, that the mechanism by which that would be introduced would have to be that employers would raise wages of men above the competitive level because if they tried to reduce the wages of women, the women would simply go to work for somebody else. If there is competition and mobility, and there is in most employment markets, there is a wage rate that exists out there that you are looking at whenever you accept a job and if you do not get that from your present employer you go somewhere else.

I am doing that right now. I am changing employers. I am leaving Emory University and going to Clemson University because Clemson University is willing to pay me more, and this sort of thing limits the ability of employers to do this sort of thing that we read about when we read the typical discussions of discrimination, somehow depressing the wages of women. No single employer can depress the wage of anybody because an employee will simply go somewhere else.

So what I was saying is where discrimination exists or where discrimination produces wage rate effects, it has to be that male employees or white employees if it is race discrimination, are going to be paid more than they are worth.

Representative SNOWE. Well, getting to your point that an employee can simply move to another employer that perhaps may not be prejudiced, the point that I think the National Academy of Sciences was making in its report and other statistical evidence that I think was also documented in the case of the AFSCME versus the State of Washington, is the fact that the more the occupation is dominated by women, the less it pays.

So are you suggesting that women can go elsewhere to find a position where prejudice again might exist. I do not think that is a very good solution to a problem that has wide ranging implications.

Mr. LINDSAY. Well, the fact that we know that on average women make about 40 percent less than men, so obviously occupations in which there are more women are going to be paid less on average than occupations in which there are mostly men. It is statistically a truism.

So the question really boils down to the fact of whether it is desirable to try and increase the wages in these occupations that women fill and, as Mr. Killingsworth pointed out, you may think by doing that you're going to increase the wages of women and you will to a certain extent to the few women who remain employed, but by and large, what you are going to do is eliminate those jobs. You cannot force employers to pay women more than what women are worth.

Representative SNOWE. Should women assume men's jobs?

Mr. LINDSAY. I believe that women should fill the jobs that they want to fill. I don't think women are being forced into jobs right now that they do not want to fill.

Representative SNOWE. Thank you.

Senator Evans.

Senator EVANS. It has been fascinating testimony. I would like to ask each of you to begin with to give me a very brief rundown, just so I understand who you are better, of your experience since graduate school.

Mr. KILLINGSWORTH. I will start. I will probably get the dates scrambled because my memory is deteriorating the older I get.

Mr. LINDSAY. Atrophy. [Laughter.]

Mr. KILLINGSWORTH. That is just decay. Starting in 1969, I worked until 1975 at Fisk University in the economics department. From 1975 to 1976, I was a visitor at Princeton's Industrial Relations Section. From 1976 to 1978, I was at Barnard College, Columbia; and from 1978 on, I have been at Rutgers. I have had leave appointments of one sort or another, but those are the major positions held

Mr. LINDSAY. I went to the University of Virginia as a graduate student and from there I went to the London School of Economics for 1 year on a post doctoral. From London School of Economics, I went to UCLA and I went through various stages of academic advancement there, from assistant professor to full professor, and I was made full professor there in 1980. I moved to Emory in 1980 and, as I said, this summer I moved to Clemson.

Senator **Evans**. OK. Mr. Lindsay, I find it difficult to let a couple of statements go as being descriptive of today. The first one you said on page 2, "that one might with equal legitimacy prove that the pay gap is simply the reflection of women's inferiority to men in work. Few would find the latter argument convincing, and let me hasten to add that I find it totally unappealing."

You did not say that you found it totally wrong. Do you?

Mr. **Lindsay**. I do not entertain——

Senator **Evans**. Certainly it is unappealing to suggest that women are inferior to men, but you haven't said that you find that wrong.

Mr. **Lindsay**. No. I think it is wrong. I cannot prove it is wrong. That was the point of that paragraph, that given the fact that women make less than men, the fact is consistent with both of those hypotheses; one, that there's discrimination; also that it is consistent with the hypothesis that women are simply inferior to men.

The question presented then is, how do we test those two competing hypotheses? And there are five other hypotheses that are also consistent.

Senator **Evans**. I understand all that. I was just interested in the word "unappealing," as a description.

You go on to say that, "Typically the husband specializes in work outside the home, while the wife specializes in home-based activity. Husbands bring home the bacon, and wives cook it, so to speak." And then the next paragraph goes on to expand upon that.

I suspect that I could find the references, but that sounds almost identical to the description of the labor market and the circumstances of men versus women in the testimony given before this Congress in the concept of equal pay for equal work in 1945.

I suggest that there is a lot happening in the world outside academia that is changing rapidly and that I rather suspect that it won't be too many years before we may well find that there are just as many women as men full-time in the marketplace, that they will make their transfers and moves just as often on the basis of a wife's needs as a husband's. I'm not at all sure that when that day comes that we will come even close to eliminating the differences which now exist in pay scales. But I find it interesting that you—it seems to me that you're describing a past rather than a future.

Mr. **Lindsay**. Well, I certainly don't have any numbers in front of me, but I would be willing to bet that the majority of households in the United States in 1984 are organized along those lines.

Senator **Evans**. Would you suggest that there's been any year in the last 20 in which the movement hasn't been in the other way, however?

Mr. **Lindsay**. Certainly in the past 20 years there has been an increase in the labor force participation rate among women. Still, as I said, even among women with college degrees, it's only about 41 percent, which means that they spend more than half of their time not fully occupied and that's college-educated women.

Senator EVANS. What would you guess the 41 percent was 10 or 15 years ago?

Mr. LINDSAY. I don't have any basis to guess. Do you?

Mr. KILLINGSWORTH. No. However, I think it's very important not to lose sight of a very important distinction; namely, the behavior of employers and the behavior of other people, and part of the anguish and rage and push for title IX and the feeling of intensity in the *Grove City* decision is precisely because people know full well that employer discrimination is not the only reason that accounts for differences between men and women workers or for the fact that there are an awful lot of women out there who think that it's ladylike to be a nurse and it's not ladylike to be a riveter or an architect or a biologist or a lawyer. Unfortunately, it seems to me that in assuming—as comparable worth in effect does—that the entire locus of women's economic disadvantage is the behavior of employers is just a mistake. And to put resources into comparable worth is going to mean taking resources out of title IX and title VII and other sorts of measures that I call conventional antidiscrimination efforts.

Senator EVANS. I certainly will buy the idea that comparable worth cannot substitute nor should it for other measurements and other factors involved in a very complex marketplace. I guess I'll buy that if you'll buy the concept that the marketplace is a long way from being perfect.

Mr. KILLINGSWORTH. I don't think there's any incompatibility between those two notions. Unfortunately, the market works very efficiently, at least frequently, in response to higher wages and in raising the wage of low wage female jobs the market will do its best, believe me—and it's not just a theory, we've seen it happen in Australia. I do not think one can ignore evidence of that kind. It's going to make an awful lot of women worse, not better. I certainly share the objectives. The question is, is this the means to that end?

Senator EVANS. In another place and another time, that's worth arguing about because I find that an arguable thesis. If the market worked perfectly, you'd have a fine example, Mr. Killingsworth, in the police exam in New York City. If the market works as you suggest it does and New York City each time it advertises for new policemen it has thousands of applicants, shouldn't they promptly lower the wage of policemen?

Mr. LINDSAY. Absolutely.

Senator EVANS. And of course, that doesn't happen. It's an indicator of an imperfect marketplace and we could go on for a substantial period of time and indicate in the doing of that that the marketplace isn't perfect. It's a long way from perfect for those who are out there in the marketplace that are trying to work it. It doesn't happen. Wages stay high, but I can guarantee you it is still darned tough for a woman who desires to be a policeman to get in the door. It's still darned tough for a woman, probably tougher, for a woman who wants to be a fireman to get in the front door, even though there are a lot of them trying, and the wages are high and there are well qualified applicants. The market isn't working in that case.

Back to Mr. Lindsay, again in your testimony you say, "Married women will not accept work involving expensive retraining, rigid schedules and long commutes at the same wages offered in more attractive jobs." Of course that's true, but I think it's equally true for men.

Mr. **Lindsay**. Absolutely.

Senator **Evans**. So why make the statement? It's everyone. That's so basic that anybody will take the more attractive job over the less attractive job.

Mr. **Lindsay**. Sure. But the point is, if there is this specialization that I described going on within the household, then men will take these jobs because they are specializing and working full time. Women have to be able to pick up and transport their style of employment from one place to another because husbands move.

Senator **Evans**. Really? In fact, I'm curious about your own situation. I hate to get into personal situations. But if you're moving from Emory to Clemson, you said in your statement that your wife is a reading therapist, is she giving up her job to move?

Mr. **Lindsay**. She's very unhappy about the move.

Senator **Evans**. You're both working at Emory. What if your wife had received a splendid offer as a reading therapist in some other city. Would you have given up your job at Emory to travel with her?

Mr. **Lindsay**. We probably would have worked something out. The fact is, that even though my wife is a reading specialist, like many married women who have raised a family she's been out of the labor force about 20 years and she doesn't make as much money as I do yet.

Senator **Evans**. I suggest that if you watch what's happening around you that there are many, many, many more young couples where both are working, both may be professionally trained, and are equally sharing the responsibilities in the household, so that the thesis that somehow women are not well trained or as adequately trained or remain as long in the marketplace, we are even finding that maternity leave for fathers is getting to be as common as maternity leave for mothers, which you may find it an aberration, but I think it's just as logical.

Mr. **Killingsworth**. Senator, those are not the people whom comparable worth is trying to help. Those are people you see wearing tennis sneakers and business suits walking down K street. They're not people in low wage jobs. It is precisely those people that comparable worth supposedly is going to help whom it's going to hurt.

Senator **Evans**. As I say, we probably don't even have time enough today to get into the arguable thesis, but that's not always the case. I think that in spite of that fact and in spite of the movement that's coming in that direction, and in spite of perhaps equal backgrounds and education and equal sharing of home responsibilities, we still find, I would bet on the overall, a substantial difference between the wages earned by the husband and the wages earned by the wife under those circumstances, whether it's the high end or the low end of it. Because you find a lot of couples who find it necessary, if not desirable, for both to work, neither one of them maybe even graduated from high school. They're not working at professional jobs. They're working at jobs at the low end of the income scale. There's still a major differential between the two.

I guess you're both aware of the common use of job evaluation in industry over many, many years, at least some professionals have made quite an industry out of that operation. Do you find that to be a valid method within a private industry for internal alignment of various jobs within that particular company?

Mr. **Killingsworth**. Well, I said I think in the paper that to the extent that job evaluations are successful by the light of the enterprise who use them, they are essentially just attempts to guess at what supply and demand would actually generate and frequently such evaluation systems are modified. They plug in something called a market factor when they discover that they either have too many applicants or too few. So that in some sense job evaluation systems when they work well by the lights of the firm, not necessarily anybody else's, work best when they mimic what the market is going to generate.

There's a quote also from Thomas Gleason of the AFL-CIO to the effect that labor has found that job evaluation systems can often be quite biased and he says that results also show that when labor and management get together things are less biased. And I think the problem with that is that 80 percent of the work force isn't represented in collective bargaining. What do they do?

Mr. **Lindsay**. Let me add to that, Senator. One of my best friends, an old fraternity brother of mine, that I got back together with when I moved back to Atlanta, worked with the Federal Government for about 20 years. He was a fairly high executive in GSA before he resigned and went into private consulting. But we were talking about this one day and, as you know, civil service is a job evaluation system. And he said that one of the biggest headaches that he had in his job at GSA was monkeying with these job descriptions of employees under him in GSA, trying to add bogus requirements or whatever to the job description in order to get the pay rated for those positions up to a level where he could hire people. And I think this is indicative of the problems that most employers will have with a pay evaluation system, is that the market is going to determine what wages have to be paid in jobs, not the job evaluation, and to the extent that the job evaluation comes up with the correct number, then it's going to be OK. But whenever the job evaluation comes up with a number which is different than the market determines ought to be paid, it's going to be the pay evaluation system that has to be modified, not the market wage.

Senator **Evans**. Well, that suggests again that the market is working perfectly and I though we had established here sometime ago that I would give on the idea of the comparable worth to do the whole job if you would give on the idea that the market worked perfectly.

Mr. **Lindsay**. Certainly to the extent that you have something like the city of New York determining wages, they can set their wages for policemen as high as they want to.

Senator **Evans**. No; I'm talking about the private marketplace. I don't know if you were here when I was presenting testimony earlier, but I know very well from personal experience in negotiating labor contracts in the construction field that that is done without equal forces on both sides of the bargaining table. The interest of the labor unions or the craftsmen is to get the highest wage possible for their work. The interest of the contractors who are negotiating for the other side is to get the job done, but not necessarily at the lowest cost possible. They want to get the job done, but they're not paying the wages. The wage is being paid by the owners of the building or the ones who are ultimately going to hire the contractors. And I am thoroughly convinced that that is at least partially responsible for the abnormally high wages in the construction industry.

And the same thing I think is true when you talk about a public utility as a monopoly. Their interest is in keeping the lights on or the utility going. If there's a threat of a strike, it's hardly an even contest. Besides which, if they pay more, they pass it along to the ratepayers and the ratepayers have little choice except to reduce, if they can, the use of that particular utility, and the utility with a larger cost basis then gets a rate of return on top of it and probably ends up better off than if they paid smaller wages.

I think there are just scores of examples where the marketplace has barriers and all sorts of aberrations in it that make it not quite the perfect measure that I think you're suggesting.

Mr. LINDSAY. Well, I'm certainly willing to admit that the market probably doesn't work with the precision that economists frequently describe in their models of general equilibrium or whatever, but on the other hand, when you see what happened in the auto industry a couple years ago when the inflation rate fell and the built-in escalators in the auto workers contracts where so high that the Chrysler was about to go out of business and a number of automobile companies were laying workers off left and right, and the auto workers went back to the bargaining table and renegotiated those wages. They realized the wages were set so high that they were causing jobs to be eliminated.

Senator EVANS. Getting back to the internal alignments as an alternative for government, I guess we're maybe arguing more than we really should, because I had the opportunity as president of a college to implement, which I did, for all of the exempt employees of the college, an unusually large number because our State does not classify many of the employees that are at colleges and universities, leaving aside the faculty. We used a job evaluation system. They were quite disparate jobs. It was quite difficult to know precisely what the marketplace was in some of the jobs that are fairly unique, but we were able to accommodate market factors very readily.

We created a salary grid which had a whole series of ranges on it and there were 50 steps in each range 1 percentage point apart, and the job classification merely established a range. It said range H or range K or range L was the appropriate pay for that particular position, and any income in that position would be paid at that range. But while the target point was the midstep, the 25th step, the hiring authority was perfectly able to reflect either unusual experience or unusual market factors within that fairly broad range along the steps and was able to hire or advance people along those steps as long as the same ranges were maintained.

Mr. KILLINGSWORTH. But it strikes me that to the extent that the job evaluation system is able to accommodate market factors, then it can essentially just become an excuse for following the market.

And I think one has to ask, can we imagine how all this would actually look in the real world once a comparable worth law is passed or once a policy of comparable worth is promulgated. The company will hire a company oriented job evaluation firm and get a job evaluation done its way. A bunch of people will start to feel that's being done unfairly. They will hire a plaintiff job evaluation firm and do a job evaluation their way.

Senator **Evans**. Our job evaluations are done by a committee of the college, including people at all levels, from the bottom to the top, who are trained in doing it. So it isn't a management technique any more than it's an employee technique. It's a joint effort and it worked very well.

OK. I guess we've established differences of opinion.

Mr. **Killingsworth**. We don't know if they're due to discrimination.

Representative **Snowe**. I just have several more questions. Mr. Killingsworth, regarding your comments to Senator Evans when he was describing a two-wage-earner family trying to secure jobs, I think you said in the case of the woman that the comparable worth policy would not assist that woman but rather would help somebody who walks down K Street in a tennis outfit. But yet the Bureau of Labor Statistics would indicate that 80 percent of the women in this country occupy 20 out of 427 occupations identified by the Department of Labor and they are generally occupations that are undervalued and underpaid.

We are not talking about passing any legislation on comparable worth; we're talking about stronger enforcement of existing laws, not only the Equal Pay Act, but also title VII of the Civil Rights Act upon which the *Gunther* case was based; and the Supreme Court established, had a broader interpretation than just equal pay for equal work. So we're talking about stronger enforcement of the laws, what our position should be as Members of Congress in ensuring that discrimination does not exist in the workplace, and eradicating that discrimination.

So how then would comparable worth help out in a situation like that?

Mr. **Killingsworth**. Well, let me back up. First, I didn't say comparable worth would help these yuppies.

Representative **Snowe**. No. You said it wouldn't help——

Mr. **Killingsworth**. I said it wouldn't help the people that it was actually intended to help; namely, people——

Representative **Snowe**. It's intended to help anybody who's being discriminated against, even in the professional categories, whether women lawyers, or women engineers, or women administrators or women in management. They're all discriminated against. They all earn less than their male counterparts. So it's not a question of the higher income scale, middle income scale, or low income. The question is discrimination.

Mr. **Killingsworth**. All right. The counterparts within the same job, as I understand it at least, are protected by the equal pay for equal work standard—equal work, not comparable worth. Comparable worth, as I understand it, seeks essentially to raise the pay in predominantly female low wage jobs—the 80 percent of the people who are in the 20 lowest paid jobs which is the figure that you quoted. And the reason why I said it's not going to help, it's not going to help precisely because if you simply raise the cost of low wage labor without doing anything to opportunities, then you're simply going to dry up some of the employment opportunities that there are for low wage labor without creating additional opportunities elsewhere.

Now that, as I understand it, is essentially what comparable worth is about, to raise the wage of people in low wage jobs.

Representative SNOWE. Not in low wage jobs necessarily, wherever discrimination exists in the workplace.

Mr. KILLINGSWORTH. All right. Then take a medium-level job that is predominantly female and is paid less than an upper-level job that is predominantly male.

Representative SNOWE. Where favoritism exists, as Mr. Lindsay suggested, perhaps we should reduce the wages of men. Is that what you're saying?

Mr. KILLINGSWORTH. That's right. That certainly ought to be considered and, as I say, the experience with the New York City police exam may be a very good example of that.

Representative SNOWE. Well, as you know, an employer's evaluation of one's ability, the employee's ability, is based on some subjective evaluation and it's very important that that evaluation be objective. But how objective can an employer be when you include race and sex?

Mr. KILLINGSWORTH. In a job evaluation?

Representative SNOWE. Right.

Mr. KILLINGSWORTH. Well, essentially, including race and sex—race and sex are extraneous, so including them in a job evaluation obviously, as far as I'm concerned anyway, is not allowed. I don't know that employers have in fact explicitly included—yes, I do—there are some examples I think from Westinghouse I remember reading, an example quite a while ago—Westinghouse explicitly had quite different job evaluation systems for the different sexes, and that's perhaps a flagrant example of how evaluation can be manipulated. Clearly, an employer who wants to discriminate and who has to use a job evaluation system would have to find a somewhat more subtle way of doing it, but clearly employers who want to discriminate can exercise a great deal of ingenuity in doing that. I don't think there's any reason to suppose that simply because we have a principle called job evaluation that we're guaranteed getting something that is objective. Job evaluation is inherently subjective. Hay Associates, one of the big job evaluation firms, will say so. It's inherently subjective and they don't see any way around it and I don't think anybody else does either.

Representative SNOWE. Well, in looking over the four defenses included in the Equal Pay Act, and incorporated into title VII, it says that except as such payment is made, one can establish a certain wage salary and if they can expiain the difference based on seniority, a merit system, or a system which measures earnings by quantity or quality of production, or a differential based on any factor other than sex, illegal discrimination cannot be shown. Is that so difficult for an employer to prove?

Mr. **Killingsworth**. Well, the question is, How would you justify a difference in pay if there were a job evaluation system in place? Have I understood correctly?

Representative **Snowe**. Yes. If an employer would be questioned on his or her hiring practices and these are the defenses that an employer is allowed—basing the salary on anything other than sex, a merit system or seniority system, or something that's objective and can be explained—it seems to me very reasonable.

Mr. **Killingsworth**. Yes; and I think the difficulty is that an employer who wants to discriminate is going to hire a firm that will get a reputation for having done job evaluations that tend to produce what the customer wants and they will bring in an expert who will testify, "Yes, we considered this factor and that factor and the other factor and we put it in our job evaluation and, lo and behold, because of what the company was doing was just fine by the lights of that evaluation."

But I think the notion that there's such a thing as an objective sort of platonic kind of job evaluation that sort of comes down in tablets from the mount is simply a mistake.

Representative **Snowe**. Well, I just don't think it's as difficult as you suggest. I know in my own office I make similar decisions and they are based on a number of criteria and I just do not see what you are suggesting is so difficult to obtain as far as an employer is concerned, when you consider the fact they they can account for pay disparities based on these four defenses, and not sex or race. I just do not see how difficult that could be in making that decision.

Mr. **Killingsworth**. Well, the difficulty is job evaluation can be used, just like all sorts of other things, as a pretext, as a subterfuge, and I think the experience with job evaluations suggests that it can indeed be done in that way. In the old days, it was done very crudely. Employers didn't even bother to disguise their tracks. Now it can be done in a more sophisticated way.

Representative **Snowe**. Any other questions?

Senator **Evans**. No; just a comment. If in fact that is widespread, it just suggests that discrimination is far more pervasive than anyone thought. I'm not sure that that really is the case. I suspect that a good many who are employers and who hire job evaluation firms do so because they want to get some information from some who are expert in the field, and it's not that they're necessarily predetermining what the results should be any more than either of you would predetermine the results of research that you're doing. That's the whole nature of research, to find an answer which we do not yet know. And I suspect that's the case of far more employers—I would hope at least—than those who would deliberately seek to discriminate and use these systems as a method of doing so.

Representative **Snowe**. Thank you very much for being here today and for presenting testimony and participating in this hearing. We certainly appreciate it.

Next, we will hear from Edwin Clarke, who's a private businessman from Illinois, who's a personal consultant on personnel administration and employee relations. Go right ahead.

STATEMENT OF EDWIN R. CLARKE, PRESIDENT, E.R. CLARKE ASSOCIATES, INC., LAKE FOREST, IL

Mr. CLARKE. Thank you, Madam Chairman. Let me begin by stating that I apologize for the fact that you do not have a complete text of what I'm going to say. I got the invitation to come late yesterday. I have adapted something I had prepared previously. It relates to the subject. The original was focused on two bills that I understand are being considered by the Congress, H.R. 4599 and H.R. 5902. But realizing that this was a different committee, I have read the two concurrent resolutions that exist, as I understand it. I've also read S. 1900, the Senate bill, and my remarks therefore are going to be more generalized and yet they still are going to focus somewhat on H.R. 4599.

Representative SNOWE. Well, the full text of your statement and the previous witnesses' will be included in the record.

Mr. CLARKE. Thank you.

As a representative of U.S. business and industry with a career spanning more than 30 years in the competitive, profit-seeking, job-providing private sector of this country's economy, I am most grateful for the opportunity to submit this statement in connection with the committee's consideration of the several important pieces of proposed legislation on pay equity. Taken together, the proposed pieces of legislation will impact both the public and private sectors of the economy. My remarks will deal with the general question of comparable worth, or pay equity, and also with certain specific aspects of the concept that have not been brought out in the public debate to date, so far as I know.

My name is Edwin R. Clarke. My present occupation is that of providing consulting services in all phases of employee relations and personnel practice, including union relations, compensation plans, employee benefits, and so forth. My statement today presents my views as a professional with extensive experience in employee compensation systems. I also speak for the American Federation of Small Business, a national organization with more than 25,000 members, headquartered at 407 South Dearborn St., Chicago, of which I am a member.

From 1946 through 1983, I worked in the employee relations and personnel administration function in several U.S. manufacturing companies and was in charge of the activities of my employers for this function continuously since 1955. Throughout my career, though my responsibilities encompassed many other aspects of the employee relations function, I was personally involved with position-classification systems and wage-setting procedures. The specific activities included negotiating and administering the organization of job duties into job classifications, the application of job evaluation criteria to job classifications, the assignment of job classifications to wage grades, the determination of the wage rates to be paid for each wage grade, and so forth; and the same for office and management classifications except that no union was involved. Careful attention to eliminating and avoiding sex discrimination in all wage system design and in the wage rates pursuant to these systems has been a high-priority aspect of my involvement in this activity.

The purpose of all these bills dealing with comparable worth, namely to seek out and eliminate sex-based wage discrimination, is laudable and noncontroversial. However, the bills state the premise which has not been proven, that wage differentials are discriminators, per se. My experience, however, is that employers strive to pay market-level wages and salaries regardless of the gender composition of the population of the various job classifications. No employer today has the intention to discriminate between the sexes in wage rates.

The wage differentials that exist between jobs reflect many forces; for example, supply and demand for particular skills. Quantifying the several components of a wage differential is imprecise and controversial at best. As a result, I have come to the belief that marketplace wage rates indicate the best and fairest measurement of the value of a job classification, representing the composite of all the forces which determine that value. Any wage-setting procedures that may be devised should be required to convert job evaluation point values to marketplace wage rates.

One purpose of this family of bills is seeking out and eliminating sex-based wage discrimination in the Federal Government. However, H.P. 4599 seems to apply only to that portion of Federal employees covered by the General Schedules, which we usually talk about as the GS schedules. Why that bill was not written to apply to the crafts and the other classifications of that nature, another very large group of employees covered by the Federal wage system, is not clear, and seems inconsistent.

It is true that the GS evaluation system and the FWS evaluation system are quite different. The GS system is a nine-factor point evaluation system which converts to one salary structure that is applied uniformly nationwide. FWS, the Federal wage system, uses a whole-job evaluation approach which relies basically on area surveys of prevailing market rates for 39 benchmark classifications. There are 187 different areas wage structures. However, there is no reason that I know why two systems should not be treated alike in seeking out sex-based wage discrimination.

The GS system of classifying jobs is the system which the Office of Personnel Management created in implementation of the 1978 Civil Service Reform Act, only 6 years ago. One provision of the Act is that there must be equal pay for work of equal value. Other key provisions are section 2301(b)(3)—that pay rates are to be determined "with appropriate consideration of both national and local rates paid by employers in the private sector," and section 5301(a)(3)—that "Federal pay rates comparable with private enterprise pay rates for the same levels of work." Certainly, therefore, it must be presumed that the grade assignments of the classifications and the wages paid complied with the act, especially the requirement that there should be equal pay for work of equal value; in other words, regardless of whether the classification populations were predominantly male or female. It will be unlikely, then, in my opinion, that the Office of Personnel Management will discover classifications which have been incorrectly graded. The review will be beneficial nevertheless. However, section 2(b)(1) of H.R. 4599, which seems to call for changes in the present system of evaluating General Schedule jobs, seems unnecessary in view of the fact that the present system was insitituted under the "equal pay for work of equal value" directive.

At this point it is appropriate to state my conviction, developed over many years of working with wage-setting systems, that all systems of job evaluation are inadequate to the task of establishing true relative values for job classifications. Basically the reason is that the values indicated are the result of factor selection and weighting as determined by the person or group that had a certain objective in making the factor selection and assigning the weights. Perhaps the objective was to match marketplace wage rates. Perhaps the objective was to prove that sex-based wage discrimination was present. Whatever objective there may be can be pretty well achieved by the designers of the system. Therefore, a requirement that job evaluation point values be translated to marketplace wage relationships—which is actually required in the present Federal GS system—is a good means of minimizing the weaknesses of job evaluation systems. I believe it is the best method available for giving job evaluation realistic validity.

When job evaluations are performed with deliberate disregard for marketplace information, the results are invalid, troublesome and costly. An example of such is a recent study involving a sample of State of Illinois jobs commissioned by the Illinois Commission on the Status of Women. The job evaluation system chosen gave an average of approximately 75 percent weight to "knowledge and problem solving," 20 percent weight to "accountability," and the rest of the weight to "working conditions," which, in that system of evaluation, encompassed "physical effort, environment and hazards." The five jobs in the sample of 24 jobs that required out-of-door, all-weather work involving physical effort and relatively hazardous conditions ranked far below their relative rankings in marketplace wage rates. The job evaluation system chosen happens to be described in the interim report to the Equal Employment Opportunity Commission of the Committee on Occupational Classification and Analysis, National Research Council, entitled "Job Evaluation: An Analytic Review" in the following quoted words: "* * * used primarily for the evaluation of executive and professional jobs * * * language used in factor definition emphasizes subjective judgments to an even greater degree than most job evaluation systems * * * virtually no weight is given to working conditions." As a result of this study one "charge" has already been filed with the Equal Employment Opportunity Commission against the State of Illinois citing the relative rankings in this study, which I regard as completely invalid as evidence that sex-based wage discrimination exists. Court proceedings have been promised as soon as the EEOC completes its phase of the handling of the "charge."

I wish to emphasize that the Illinois study intentionally disregarded marketplace information and did not attempt to relate the rankings produced by the job evaluation process to the realities of the job market. But the mere fact that a study was made has become the basis of litigation and a possible monetary penalty assessed against the State of Illinois and its citizens. Incidentally, the study, a so-called pilot study, was not one ordered by the legislature. It was a result of the deliberations of the Illinois Commission on the Status of Women.

Any one of several, other job evaluation systems that exist and are well known could have been used in the Illinois study. Each one would have produced a different relative ranking of the jobs in the sample depending on the factors used in the evaluation process and the weights assigned by the designers of the system. Without doubt, however, each of the designers of these available systems would give assurance that his system design is free from sex bias. Which system should we use then? Which one should be relied on? Would it be possible to determine the existence of sex bias and the extent of its impact on wage rates in any such circumstances?

My career has been in the manufacturing industry, always striving to make and sell a product competitively and profitably. A good profit on sales, after tax, is measured in pennies per dollar—3 cents, 4 cents, 5 cents, or in a few cases more.

My discussion this morning has not yet talked about selling prices for products. Yet in manufacturing industry it is the selling prices that determine what levels of wages and salaries can be paid. The selling price must be sufficient to cover material costs, wages and salaries, other manufacturing expenses, and investment in plant and equipment. Unless the product can be sold competitively and profitably people will not be employed and it will be unnecessary to determine any wage rates or salaries.

Sex discrimination against women in wages and salaries should not exist but the methods employed to avoid it should not be permitted to interfere with the competitive capability of the enterprise.

In fact, of course, we have an innumerable variety of enterprises competing in an innumerable variety of market situations. Even a very large company accomplishes its manufacturing in any plants, some large, some small. Each has the necessity of competing successfully in its product market.

To be unsuccessful means to close down. Even the large company, therefore, may not be able to pay the same rates for the same job in plants that make different products and compete in different product markets. The accounting clerk in the plant that makes a product which competes with imports from Singapore may have to be paid less than the accounting clerk in the plant that competes with other U.S. manufacturers. Any system intended to eliminate sex discrimination, such as a companywide or industrywide job evaluation system, or a comparable worth law, that would impose restrictions on a company's freedom to compete, would be destructive and should be avoided. Sex discrimination in wages and salaries, if found, should and can be, and in my opinion must be, overcome without interfering with the ability of the plant to compete successfully in its product market.

Maintaining the vigor and competitive strength of our free enterprise system is of great importance to all citizens including women. A vigorous and successful business climate means job opportunities. Successful business requires freedom to manage and do the things that may be necessary to serve customers with competitively-priced goods. The business that is competing against imports probably will not be able to pay the same wages for the same job in a company that has only domestic competition to worry about. The imposition of wage scales by outside authority, especially wage scales derived in a system of job evaluation designed to meet a social goal, would be most unfortunate and would certainly have an adverse impact on the vigor of business in general and on the availability of jobs. Furthermore, the imposition of artificial, nonmarket rates in the public sector will strongly and adversely impact the private sector.

Elimination of sex-based wage discrimination, if in fact it exists, will certainly be assisted by focusing attention on it, rooting it out wherever found. However, other measures, different from imposing artificial wage rates, and so forth, should be emphasized in the effort. Among measures of this type that I suggest are: Much greater publicity about job openings, rates of pay, and job requirements; training programs and facilities in which females can learn the skills that the marketplace is rewarding best; counseling programs in which females can survey their own interests and talents, learn what steps are required to become employed in kinds of employment they decide upon, and make career plans.

Thank you very much for the opportunity to make this statement.

Representative SNOWE. Thank you, Mr. Clarke.

You mentioned in your testimony that the marketplace wage rates are the competitive, marketplace rates for any job classifications today. Yet, I would suggest that market rates today as well as market surveys would reflect long-held prejudices. Women up until the mid-1960's, for example, were not allowed to hold certain jobs and in addition to that, many of the occupations were advertised in the newspapers under different classifications based on gender. So that excluded women from seeking those jobs. The entry level positions of women originally started lower than men. So they started out with a disadvantage and that discrimination and those disadvantages have compounded themselves over time.

So I am not so sure that marketplace wage rates would accurately reflect the discrimination that has existed previously and has just been built into the system.

Mr. CLARKE. I am sure this is the essence of the problem and you are right. There were some practices in the past that were not correct. I do think that today all companies are trying very hard to be sure that those practices no longer exist, no longer impact the wage structures that they have. I really do believe that companies have gotten the message and the effort is being made not to do that any more.

But the question really is, how much is this wage discrimination effect that you're talking about? My point in this whole presentation is that you can't tell. Therefore, we really shouldn't devote lots and lots of dollars and hurt ourselves by spending a lot of time and effort to try and find out. I think that kind of problem is being eliminated and certainly some of the things we're talking about focus on the problem, talking about it, being sure that today title VII is being enforced, that there's lots of publicity about opportunities, that they are not related to sex whatever, I think that's the way we really should try to do it.

Representative SNOWE. But there's sufficient statistical data to indicate otherwise. Women not only are segregated into certain job occupations but, in addition to that, are paid less than their male counterparts, even in those jobs which are traditionally held by women. In addition, in professional occupations we have seen that women earn less than their counterparts, even if they have more education and more training; they earn less than their male counterparts. I think that's the problem and it is not a problem that previously existed but it exists now and I suspect it will just be further exacerbated in the future unless something is done to correct it, including rigorous enforcement of the existing laws, including title VII, which provides a broader interpretation of the Equal Pay Act based on the *Gunther* decision in 1981.

Mr. **Clarke**. But what you are leading to inevitably is some effort to measure this discrimination effect.

Representative **Snowe**. It's already been measured.

Mr. **Clarke**. I don't think it has at all.

Representative **Snowe**. By the National Academy of Sciences.

Mr. **Clarke**. Well, it's an unknown and we can't say exactly what it comes from. I don't think that is a measurement of the discrimination impact.

Representative **Snowe**. Well, in your considerable experience—and certainly you've had much of it with companies, have you come across discrimination in some of the clients that you have had to deal with over time?

Mr. **Clarke**. Not recently.

Representative **Snowe**. What would you define as recently?

Mr. **Clarke**. I know of practices—I really haven't known of anything that I would call discrimination since about 1967 about, shortly after the title VII became law, and everybody had a chance to react and take a good look at what they were doing.

You had mentioned that there are women sort of segregated in job classifications as though they were being discriminated against in that fact, that they were all in the same job classification, and I really don't think that's the case.

Representative **Snowe**. Those jobs are typically undervalued as well as underpaid and there's certainly a question. As I indicated earlier in the litany about various positions, you can start comparing. I think in your position it probably is even easier to make that determination as to whether or not discrimination exists. So I think that is the issue. I think you can compare somebody, for example, a secretary with years of experience compared to a liquor store clerk. I think that you can make that determination in your position and in your consultations with employers.

Mr. **Clarke**. Well, what I would like to do in any such case is to look at that particular situation, and I agree with you that if this should turn out to be in my professional judgment—or let's say if I see it and I tell the employer there's something wrong, the employer ought to correct that right then. That's exactly right. But I think you approach that on a case-by-case basis.

Representative **Snowe**. I think that's all we're actually suggesting—vigorous enforcement of the existing laws. As you suggest in your earlier testimony before another subcommittee, which I guess you didn't have the opportunity to present—there are a number of bills to correct the problems that might exist within the Federal Government in various Federal agencies. For example, I have a bill and Senator Evans has a bill to establish a bipartisan commission to examine one of the agencies that Congress is responsible for in the legislative branch to determine the magnitude, if any, of wage discrimination. So that's the sort of approach that's being taken at the Federal level. But in spite of all that, there is a problem out there in the private sector and the public sector as well. As you know, there are a number of cases, in particular *ASFCME* v. *The State of Washington.*

So that's the kind of approach we're trying to take. A Supreme Court decision in 1981 indicated that title VII is broader in its interpretation than the equal pay for equal work statute. So that's really where we stand.

It is so difficult then for an employer to provide an objective evaluation of a particular person in their employ doing a particular job?

Mr. CLARKE. Well, it all relates to the system of measurement, theoretical, that would be attempted, and because it has to be theoretical and it has to be largely a product of human beings, you get very much concerned to make sure that it isn't the end-all of the whole thing. You should come back finally to the realities and there you get to the question of, well, what is the amount of wage impact, let's say, that arises from discrimination? There are lots and lots of forces that determine what companies are going to pay and when you talk about discrimination you really are worrying about what you pay for one job in that company as compared to what you pay for another job in that company. I think we've said this morning that the thought really is now that we're not going to try to establish a relationship that will pervade the whole economy.

Representative SNOWE. Exactly.

Mr. CLARKE. And yet I do want to say that I get worried about whether you can really, for the Federal Government with its 2 million and some employees, establish a relationship that such and such a classification will be paid such and such a percentage of another classification always and forever, and not have that spill over into the private economy. I think it will and I really think it would be very unfortunate if because it did that it then inhibited private employers.

Representative SNOWE. As I've asked other witnesses, under the Equal Pay Act as well as title VII, there are four defenses for an employer. One is the seniority system; a second is the merit system; the third is a system which measures earnings by quantity and quality of production; and, finally, a differential based on any factor other than sex—is that difficult for an employer to prove in explaining a wage disparity?

Mr. CLARKE. Well, let me try and say what an employer has to do. He has really a job that he's talking about, and he has to decide what's a proper wage to pay for that job in relationship to the other jobs that already exist—in other words, in his hierarchy of jobs, what is the right rate of pay. The real question is, where does he turn to get the information on which he can make a judgment? He can use a system of the kind we have been talking about, yes. That system is going to be based on these theoretical things except that he's able to go into the marketplace and find what the job is paying in the marketplace, and Senator Evans earlier engaged in some discussion about the marketplace is imperfect, and this is correct; it is really quite imperfect; and I believe it is the best thing we've got. I think I'd much rather rely on the information and the judgments I can make coming out of the marketplace than I would on the pure theory. Of course, the larger the group of people you're trying to cover in your theoretical system, the more likely you are to do something wrong. The smaller the group you can deal with and the more closely you can relate to the marketplace, the better off you're going to be. Most systems in small companies are probably 100 jobs or 200 jobs. The States which are bigger, of course, have several thousand jobs. But most systems are reasonably small and are sort of local and when you're dealing with that range of job classifications, you can be reasonably good about it. There's no doubt that historically most employers have two or three such systems. They have the one that has grown up with their bargaining unit and they have the one for their management, the exempt people who are not covered by the wage hour law, and then they have the one for the clerical people and the technical laboratory people and people like that, who are covered by the wage law, but they very often will have three separate systems.

Representative SNOWE. You mentioned employers are doing something now. Could you tell me exactly what from your experience employers are doing now to rectify any existing problems as far as discrimination is concerned?

Mr. CLARKE. Well—and this is the result of suggestions from the Equal Employment Opportunity Act I should say—employers are actually going into their work forces and recruiting—I shouldn't say it that way—I should say publicizing first of all, opportunities for female employees to advance in the organization so that really amounts to recruiting because not only do you publicize by putting notices on bulletin boards but you also look at your roster of people and their skills that already exist and you then go and talk to individuals and say, "Well, are you aware that you might really be considered for this particular job if you want it?" And then I could mention one other development out of that kind of approach, that I know of, in which a company having found a person who said, "Well, yes, I would be interested but there's got to be a period in which I train for this," so the company worked out training arrangements for the particular individual. As a matter of fact, the physical demands on the particular job that I'm thinking of were considerable. In other words, it involved moving some heavy—or doing some work that involved turning things on where it would be hard to turn—and so forth. So some special tools were designed and that happened to be a very happy result in that particular situation. It's that kind of thing that I think is really the best avenue for a good solution.

Representative SNOWE. Thank you very much, Mr. Clarke, for being here today and sharing with us your experiences.

Mr. CLARKE. Thank you.

Representative SNOWE. Our last witness is Brian Turner, director of legislation and economic policy of the Industrial Union Department of the AFL-CIO. Mr. Turner will be testifying on behalf of the National Committee on Pay Equity.

STATEMENT OF BRIAN TURNER, DIRECTOR OF LEGISLATION AND ECONOMIC POLICY, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, ON BEHALF OF THE NATIONAL COMMITTEE ON PAY EQUITY, ACCOMPANIED BY CAROLE WILSON, TREASURER, NATIONAL COMMITTEE ON PAY EQUITY

Mr. **Turner**. Thank you, Madam Chairman. We have a written statement that has been prepared. I request that that be recorded in the record. I would just like to touch the highlights of that as my oral statement.

My name is Brian Turner. I am directior of legislation and economic policy for the Industrial Union Department of the AFL-CIO. I'm here today on behalf of the National Committee on Pay Equity on which I serve as a board member. I am accompanied by Carole Wilson, associate general counsel of the International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, who is also the treasurer of the National Committee on Pay Equity.

We would like to start off by stating what a pleasure it is to appear at a hearing called to "address the problem of wage discrimination and examine specific means of eradicating this injustice." It's not all congressional hearings which are so pointedly geared to such a laudable goal.

The National Committee on Pay Equity, founded in 1979, is the only national coalition working exclusively to achieve equal pay for work of comparable value. The committee has over 170 organizational and individual members, including international labor unions and major women's and civil rights groups, as well as educational and legal associations.

In our testimony we will first discuss the extent, pervasiveness and causes of the wage gap between women and men and minorities and nonminorities. Second, we would like to describe how the goal of pay equity is rapidly becoming realized as a fact of life as a result of the efforts of unions, women's and civil rights organizations and State and local government initiatives.

Third, we would like to debunk some common myths about pay equity.

Fourth, we will discuss the failure of the current administration to enforce the civil rights laws to achieve pay equity.

Finally, we will discuss what needs to be done if pay equity for women and minorities is to be obtained and we will make certain recommendations for congressional action to help achieve pay equity.

As you noted in your discussion with the economists, Madam Chairman, the wage gap between women and men is not new. It is one of the oldest and most persistent symptoms of sexual inequality in the United States. Women working full time, year round earn approximately 61 cents for every dollar earned by their male counterparts, and a woman with a college degree earns an average of $2,000 less per year than a male high school dropout.

While many people believe that the situation of employed women has improved markedly—particularly with the influx of women into nontraditional jobs—the facts indicate otherwise. The wage gap between women and men has varied little over the last 30 years and the degree of that gap is actually wider today than it was in the 1940's or at the end of the 1930's. None of the major economic, demographic and political changes of the past 20 years has made any real dent in the wage gap.

The single biggest reason for this gap is that women, overwhelmingly, do not work in the same jobs as men, but are instead concentrated in a narrow range of sex-segregated occupations with wages well below those paid to men for comparable work.

The 1981 National Academy of Sciences landmark study on Women, Work and Wages: Equal Pay for Work of Equal Value, concluded: "Not only do women do different work than men, but also the work women do is paid less."

Jobs traditionally held by women—in so-called women's work—pay less, regardless of the skills and expertise required. As one commentator has noted: "It's 'Catch 22.' Women's work historically has been paid poorly because women were doing it, and women work for less because they cannot get more."

The cost of this discrimination to families and to society as a whole is devastating. Along with the dramatic increase in the number of households headed by women, more than 9 million American family households, about 1 in 6, are maintained today solely by women. There has also been a rise in the number of families headed by women living in poverty. Almost 1 in 3 female-headed households is poor in contrast to 1 in 18 families headed by men. Of women in the labor force, 66 percent are either single, widowed, divorced, or have husbands earning less than $15,000 annually.

The principle of pay equity, or equal pay for work of comparable value, requires the elimination of wage discrimination among jobs which, although not equal, are comparable based on skill, effort, responsibility and working conditions. The majority of pay equity actions to date have been efforts to reach sex-based wage discrimination. However, in those workplaces where job segregation and low wages are associated with race or ethnicity, the principle of pay equity is equally applicable.

In the last several years there has been a proliferation of actions aimed at eliminating sex-based and race-based wage discrimination involving jobs which are not identical. In addition to ongoing education and research, there are four main strategies being used.

First, collective bargaining: Labor unions have been among the leaders of the movement for pay equity. Indeed, since 1883, which was very nearly the inaugural year of the American Federation of Labor, now the AFL-CIO, the policy was adopted that "equal amounts of work should bring the same price, whether performed by men or women." Labor unions are actively pursuing pay equity issues through the adoption of pay equity policies, union-conducted wage and job studies, negotiated joint labor-management job evaluation studies, negotiated wage equity increases, the use of grievance and arbitration procedures to correct wage-rate inequities, political action and, if necessary, litigation.

A major strategy to promote pay equity is the organizing of women into unions. Currently, women who belong to unions earn on the average over a third more than nonunion women. In fact, white-collar women union members earn an average income 44 percent higher than nonunion women. The issue of pay equity has become a powerful stimulus for organizing women workers as more and more women are realizing the need to have an organization to go to bat for them in combating sex-based and race-based wage discrimination in the workplace.

Second, organizing women outside the union context: Working women such as clerical workers and librarians who may not be in unions are organizing for pay equity raises with the assistance of working women's groups, professional associations and organized labor.

Examples can be found in the work of 9 to 5: National Association of Working Women, and The American Library Association.

Third, enforcement of Federal laws: Efforts to see title VII of the Civil Rights Act enforced are increasing with the filing of administrative charges and lawsuits. Several Federal court decisions such as *IUE* v. *Westinghouse* on which my associate worked as associate general counsel for IUE, and the Supreme Court's decision in a companion case, *Gunther* v. *Washington,* explicitly state that title VII of the Civil Rights Act does apply to wage discrimination cases in which men and women do not fill exactly the same jobs. These decisions are important sex-based wage discrimination victories because opponents of pay equity argued that the application of title VII was restricted solely to equal work situations. The decisions are also significant because they make clear that sex-based wage discrimination is as illegal as wage discrimination based on race, national origin, or religion.

Among the cases which have been pursued and surveyed in the written statement by unions are the *IUE* v. *Westinghouse, Gunther,* and *AFSCME* v. *Washington State.* This latter decision, the leading current pay equity case, is the culmination of an 11-year struggle beginning in 1973 to remedy sex-based discrimination in public employment. The *AFSCME* v. *Washington State* case showed in detail the kind of evidence that would generally result in court finding of discrimination and in that case the court found that the evidence of discrimination in compensation was overwhelming and constituted, "direct, overt and institutionalized discrimination."

The fourth avenue for closing the wage gap is actions by Federal, State and local government. The Federal Government is just now beginning to examine its own evaluation system for sex bias against its female employees. GAO is undertaking a study and the results are expected to be useful. In State and local government, many more actions have been reported in recent years. Currently, the National Committee on Pay Equity is completing and will soon publish a survey which has identified over 100 Government initiatives undertaken by school districts, counties, municipalities and State legislatures and agencies in at least 30 States.

Generally, the surveyed initiatives take the form of new laws or amendments, enforcement efforts, or executive branch policy decisions and fall into the categories of information and data collection, job evaluation studies, pay equity policies and implementation, and enforcement of existing laws.

In our prepared statement, we talk about several myths about pay equity which we dismiss and refute in much the same terms that the Chair has in these hearings today, so I won't burden you with a repetition of those. Basically we show that the apples and oranges argument—comparing different jobs on a comparable scale is impossible—reflects current practice in business, as well as attempting to overturn the rules of logic. Second, that the free market is no defense, which indeed has been found by the courts. Third, the argument of cost: while we feel that it is important to be sensitive to issues of cost and to be realistic in economic terms in examining pay equity problems, in fact our recommendation is that the least costly method for employers to correct these problems is to act early in concerted action with their employees; because if they wait and they're taken to court they will end up with a very hefty retroactive settlement. So if they're really interested in costs, let's try to go to work right away and resolve these problems.

I note finally the words of Judge Tanner in the *AFSCME* v. *State of Washington* case on the economic side that, "Defendants' preoccupation with its budget constraints pales when compared with the invidiousness of the ongoing discrimination." In effect, the judge is arguing very clearly that economic constraints really bear little weight when compared to the violation of rights which is already proscribed by law.

Perhaps the most painful aspect of our review of ongoing efforts is the failure of the Federal Government under the present administration to enforce civil rights laws to achieve pay equity.

While private parties have enjoyed some success in eradicating sex-based wage discrimination, the Federal agency charged with enforcement of title VII, EEOC, has made no effort to eradicate this type of discrimination. Shortly after the Supreme Court issued its decision in the *Gunther* case in 1981, EEOC adopted the recommendation of its Office of Policy Implementation to "provide interim guidance to field offices on identifying and processing sex-based wage discrimination charges under title VII and the Equal Pay Act in light of the holding" in *Gunther*. The EEOC memorandum set forth comprehensive procedures for "investigating" and "evaluating sex-based wage claims" and also provided that "counseling of potential charging parties should be expanded to reflect it is still in effect." Yet EEOC has done nothing to implement this 1981 directive. In fact, EEOC has refused to investigate the hundreds of sex-based wage discrimination charges that have been filed with it and continues to ignore its own investigatory procedures for processing such charges. I would like to refer again by reference to Winn Newman's testimony and the facts that he put together for the committee this morning.

Moreover, EEOC has refused to adopt any of the recommendations put forth by the National Committee on Pay Equity—suggestions that if implemented would demonstrate EEOC's commitment to this issue and result in a more aggressive pursuit of pay equity charges.

With regard to *AFSCME* v. *State of Washington*, the leading current pay equity case, which EEOC Chair Thomas has called a "straight *Gunther* title VII case," Assistant Attorney General for Civil Rights Bradford Reynolds has stated—without having reviewed any part of the record—"I have absolutely no doubt his—the judge's—decision is wrong."

Linda Chavez, the new Director of the U.S. Civil Rights Commission, has indicated her opposition to comparable worth and has characterized it in the press and in private meetings with our group as a "radical idea."

The Reagan administration's Labor Department in August 1982 accepted a totally inadequate settlement of a pay equity case that had been brought by the Carter administration against Kerr Glass Manufacturing Corp., the first *Gunther*-type complaint of sex-based wage bias filed by a Federal agency. Despite a 122-day trial in 1979, the Reagan administration's Department of Labor Office of Federal Contract Compliance Programs accepted a settlement involving no backpay and no upgrading of female-dominated jobs, and agreed that the Department would not take any action based on the Kerr job evaluation system until at least 1985.

Finally, we come to some recommendations for congressional actions to help achieve pay equity. First, we note that the issue is one of increasing importance and concern to working women all over the country and they have begun to search for and demand new solutions to this unrelenting economic discrimination.

We are aware of the many efforts taken by this Congress to take steps to achieve pay equity. We are grateful for the support that many Members of Congress have shown and their willingness to help eliminate the serious wage disparities between men and women and minorities and nonminorities. We hope to be able to work closely with you to devise the best and most concrete solutions to these problems.

However, the biggest obstacle to eliminating discrimination and achieving pay equity is the lack of adequate enforcement of title VII of the Civil Rights Act and Executive Order 11246, the Federal statutes that prohibit wage discrimination on the basis of sex, race, or national origin. The problem at the national level is not one of needing more legislation; that is, legislation in the sense of new rules and standards. The laws are clear in their applicability to pay equity and the courts have certainly strengthened that clarity in recent years. To provide guidance to those Members of Congress who would like to express their commitment to working women by taking pay equity action, we present some suggestions which were adopted by the members of the National Committee on Pay Equity.

We need to ensure that those agencies responsible for upholding the laws do so. To this end, there must be the appointment of staff and officials who are committed to full enforcement of the Civil Rights Act and the Executive order to positions in enforcement, personnel, and budget in the U.S. Department of Justice, Office of Federal Contract Compliance Programs, Equal Employment Opportunity Commission, and the Office of Personnel Management.

Without congressional insistence on the appointment of officials strongly committed to upholding the law, the wage gap will continue to exist and, in fact, may worsen. In addition, Congress as part of its oversight function, must demand that EEOC enforcement agencies earmark funds to litigate race and sex-based wage discrimination cases, something which is not now happening.

We also urge this committee to make known to EEOC its view that EEOC should immediately implement its existing directive on investigating pay equity charges and should develop its pay equity policy on a case-by-case basis as it has done in many other areas. The issuance of guidelines and broad policy statements concerning some theoretical outer parameters of the Supreme Court's *Gunther* decision is totally unwarranted and unnecessary. EEOC should concentrate first on the thousands of sex-based wage discrimination cases that fall well within the confines of the *Gunther* and *IUE* v. *Westinghouse* decisions. Guidelines are merely a smokescreen for doing nothing.

Members of Congress, themselves, can take important steps by appointing expert legislative and administrative staff who are knowledgeable about relevant economic, employment and training issues relating to pay equity.

The National Committee on Pay Equity believes that a sincere commitment to pay equity requires the establishment of a policy of pay equity in all employment and training programs to insure that female-dominated and minority-dominated jobs receive appropriate salaries. It should be a goal of all Members of Congress to see that equal pay for work of comparable value is institutionalized in such programs.

Labor unions and advocacy groups should be involved in all enforcement agency efforts to eliminate wage discrimination. These organizations represent the men and women who have been victims of discrimination.

Members of Congress can also take an important role in encouraging private employers to undertake voluntary compliance programs to achieve pay equity. Lawsuits become necessary only when voluntary compliance fails. In addition to their lawmaking powers, including for instance mandating studies and reports, Members of Congress have at their disposal an enormous capacity to educate the public about pay equity and the need for enforcement of wage discrimination laws through the media, hearings such as this one, speeches, publications, and conferences. They can also encourage their constituents to use existing law by filing charges and lawsuits based on wage discrimination.

Congress should also ensure the implementation of pay equity for Federal employees as mandated by the Civil Service Reform Act of 1978, in conjunction with Federal labor unions.

As an employer itself with authority over various legislative agencies, including the Library of Congress, the Government Printing Office, the Government Accounting Office and the Congressional Budget Office, Congress should be concerned about discriminatory wage rates in these agencies. I think these have been addressed in your bill. We therefore urge this committee to encourage the appropriate congressional committees to have Congress set an example for the rest of the public sector and the private sector by retaining an independent job evaluation expert to investigate possible wage discrimination within these legislative agencies.

Finally, Members of Congress should urge the EEOC and the Justice Department to file an amicus curiae brief or to intervene on behalf of the victims of discrimination on the appeal of the *AFSCME* v. *State of Washington* case. EEOC and Justice have a legal duty to enforce the law as interpreted by the Supreme Court in *Gunther and IUE* v. *Westinghouse.*

Let me conclude briefly by saying that the National Committee on Pay Equity urges the Joint Economic Committee to issue a report on pay equity documenting the devastating cost of sex and race-based wage discrimination—costs to the workers, their families—and let me underline the families—and to society as a whole.

This administration has shown its total contempt for strong enforcement of civil rights and antidiscrimination laws. We therefore urge that the Joint Economic Committee make clear that this administrator's abdication of its statutory obligation to enforce the civil rights law will not be tolerated and that Congress will exercise a vigorous oversight role to ensure that the laws of the United States will not be flagrantly violated without severe consequences.

In the face of the total refusal of the executive branch of the Government to care about discrimination, the National Committee on Pay Equity salutes those members of the legislative branch who are doing more than giving lipservice to women's and minorities' wage issues—those who are taking concrete steps to find and get rid of sex-based and race-based wage discrimination.

Thank you very much. We'd be happy to try to answer any questions.

[The joint prepared statement of Mr. Turner and Ms. Wilson, together with attachments, follows:]

JOINT PREPARED STATEMENT OF BRIAN TURNER AND CAROLE WILSON

Introduction

My name is Brian Turner. I am the Director of Legislation and Economic Policy for the Industrial Union Department of the AFL-CIO (IUD). I appear here today on behalf of the National Committee on Pay Equity of which the IUD is a board member. I am accompanied by Carole Wilson, Associate General Counsel, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO, who is also the Treasurer of the National Committee on Pay Equity.

The National Committee on Pay Equity, founded in 1979, is the only national coalition working exclusively to achieve equal pay for work of comparable value. The Committee has over 170 organizational and individual members, including international labor unions and major women's and civil rights groups, as well as educational and legal associations. A list of our organizational members is attached to this statement.[1]

The purposes of the National Committee include:

- Providing leadership, coordination and strategy direction to members and other pay equity advocates;
- Providing assistance and information to the growing number of public officials, labor unions, women's groups and other organizations and individuals pursuing pay equity;
- Stimulating new pay equity activities; and
- Bringing national and local attention to the issue.

In our testimony today we would first like to discuss the extent, pervasiveness and causes of the wage gap between women and men and minorities and non-minorities in the United States.

Second, we would like to describe how the goal of pay equity is rapidly becoming realized a fact of life as a result of the efforts of unions, women's and civil rights organizations and state and local government initiatives.

Third, we would like to explode some common myths about pay equity.

Fourth, we will discuss the falure of the federal government to enforce the civil rights laws to achieve pay equity.

Finally, we will discuss what needs to be done if pay equity for women and minorities is to be obtained, and we will make certain recommendations for congressional action to achieve pay equity.

I. Extent, Pervasiveness and Causes of Wage Inequality

The wage gap between women and men is not new. It is one of the oldest and most persistent symptoms of sexual inequality in the United States. Women working full-time year-round earn approximately 61¢ for every dollar earned by their male counterparts in the U.S., and a woman with a college degree earns an average of $2,000 less per year than a male high school dropout.[2] In state and local governments, women earn 71¢ for every dollar earned by men.[3] In the federal government, the ratio is 63¢ to one dollar, while in the private sector, employed women earn only 56¢ for each dollar men earn.[4]

While many people believe that the situation of employed women has improved markedly — particularly with the influx of women into non-traditional jobs -- the facts indicate otherwise. The wage gap between women and men has varied little over the last 30 years.[3/10] None of the major economic, demographic and political changes of the past 20 years has made any real dent in the wage gap. The growth of white collar industries and the accompanying demand for female labor, the massive entry of women into the labor force and the passage and development of anti-discrimination laws, particularly the Equal Pay Act (EPA) and Title VII of the Civil Rights Act of 1964, have all been inadequate to break down this barrier to equality.

The single biggest reason for this gap is that women, overwhelmingly, do not work in the same jobs as men, but are instead concentrated in a narrow range of sex-segregated occupations with wages below those paid to men for comparable work. Although there have been some changes in the types of jobs men and women hold, the degree of job segregation has remained essentially the same since the beginning of the century.

In the 1970s, more than 40 percent of all women workers were employed in 10 occupational categories: secretary, retail trade salesworkers, bookkeeper, private household worker, elementary school teacher, waitress, typist, cashier, sewer and stitcher, and registered nurses. In 1982, more than 50 percent of all female employees were found in only 20 of a total of 427 occupations.[6/] More than half of all employed women in 1982 worked in occupations which are 75 percent female, and 22 percent of employed women were in jobs that are more than 95 percent female.[7/]

The degree of job segregation is slightly higher for Black women than for white women. Fifty-four percent of Black women are in two of the 12 major occupations, clerical and other service workers, whereas 51 percent of white women are in those occupations.[8] Black women are more likely to be found in service (29.8 percent) or blue collar jobs (17.2 percent) than are white women (19.6 percent and 12.8 percent).[9] On the other hand, Black women are less likely to hold white collar jobs (clerical, sales, professional, managerial) than are white women.[10]

In 1981, the National Academy of Sciences released a landmark study entitled Women, Work and Wages: Equal Pay for Work of Equal Value, which concluded: "Not only do women do different work than men, but also the work women do is paid less, and the more an occupation is dominated by women, the less it pays."[11] The study added that "only a small part of the earnings differences between men and women can be accounted for by differences in education, labor force experience, labor force commitment, or other human capital factors believed to contribute to productivity differences among workers."[12]

Jobs traditionally held by women -- in so-called women's work -- pay less, regardless of the skills and expertise required. As one commentator has noted: "It's 'Catch 22': Women's work historically has been paid poorly because women were doing it and women work for less because they cannot get more."[13]

The cost of this discrimination to families and to society as a whole is devastating. Along with the dramatic increase in the number of households headed by women -- more than nine million American family households, about one in six, are maintained solely by women[14] There has also been a rise in the number of families headed by women living in poverty. Almost one in three female-headed families is poor in contrast to one in 18 families headed by men.[15] Of women in the labor force, 66 percent are either single, widowed, divorced, or have husbands earning less than $15,000.[16]

Twenty years of wage corrections required by the Equal Pay Act -- which mandates equal wages for men and women performing the same work for the same employer -- have brought higher wages for thousands of women, but have not reduced the wage gap because relatively few women hold the same jobs as men. Similarly, although affirmative action measures have created many new job opportunities for women, they have not reduced the wage gap because the movement of women into non-traditional jobs has not matched the growing number of women workers in traditionally female occupations.

It has been suggested that the wage gap would decrease if nurses, teachers, secretaries and social workers, for example, were to leave their fields and find jobs in higher paying male-dominated occupations. Suggestions of this type are an extremely limited remedy for several reasons. First, they fail to address the basic problem of wage discrimination against people in predominantly female jobs. Women and minorities have a legal right to be paid fairly -- without discrimination -- for the work they perform. Indeed, employers bear a heavy burden for having "locked" women and minorities into their jobs and perpetuated illegal segregation for 20 years following the passage of the Civil Rights Act.

Second, they call on women -- and men who labor alongside them in traditionally female jobs -- to give up important work and years of training and experience. Third, particularly in times of high unemployment, the overall shortage of jobs makes it unlikely that this job integration approach to reducing the wage gap can succeed. Finally, these suggestions ignore the need for society to continue to have workers filling these important jobs in some of the fastest growing occupations.

The principle of pay equity, or equal pay for work of comparable value, requires the elimination of wage discrimination among jobs which, although not equal, are comparable based on skill, effort, responsibility and working conditions. The majority of pay equity actions to date have been efforts to reach sex-based wage discrimination. However, in those workplaces where job segregation and low wages are associated with race or ethnicity, the principle of pay equity is equally applicable. For example, in New York State's $500,000 pay equity job evaluation study -- the largest to date -- both race and sex are being studied as bases of discrimination.

Job value can be measured by a consistent set of criteria, including factors such as skill, effort, responsibility and working conditions, but in practice job evalution systems often contain built-in biases. The best-known study of the discriminatory potential of job evaluation systems is contained in the National Academy of Sciences' 1981 report, Women, Work and Wages: Equal Pay for Work of Equal Value. The NAS study did not find all aspects of job evaluation inherently discriminatory, and it specifically encouraged reliance on such procedures as the only acceptable method of exhibiting fairness and equity in a wage system.

II. Pay Equity As An Emerging Fact Of Life

Pay Equity has become more than an interesting concept. In the last several years there has been a proliferation of actions aimed at eliminating sex-based and race-based wage discrimination involving jobs which are not identical. In addition to on-going education and research, there are four main strategies being used:

(1) Collective Bargaining. Labor unions have been among the leaders of the movement for pay equity. Indeed, since 1883, it has been the policy of the AFL ⑥ -- now the AFL-CIO -- that "equal amounts of work should bring the same price, whether performed by men or women." Labor unions are actively pursuing pay equity issues through the adoption of pay equity policies, union-

conducted wage and job studies, negotiated joint labor-management job evaluation studies, negotiated wage equity increases, the use of grievance and arbitration procedures to correct wage-rate inequities, political action, and, if necessary, litigation.[17]

A major strategy to promote pay equity is the unionizing of women. Currently, working women who belong to unions earn on the average over a third more than non-union women.[18] In fact, white-collar women union members earn an average income 44 percent higher than non-union women.[19] The issue of pay equity has become a powerful stimulus for organizing women workers as more and more women are realizing the need to have an organization to go to bat for them in combating sex-based and race-based wage discrimination in the workplace.

(2) Organizing. Working women such as clerical workers and librarians who may not be in unions are organizing for pay equity raises with the assistance of working women's groups, professional associations and organized labor.

9 to 5: National Association of Working Women has used public pressure to win pay equity increases. In Boston, the John Hancock Insurance Company agreed to a 10 percent wage increase for clerical workers in 1981 after 9 to 5 organized a public pressure campaign exposing Hancock's low wage structure.

The American Library Association has worked with its members to win pay equity for librarians. Two studies performed by the Fairfax County (Virginia) Library Association documented that librarians are the victims of sex-based discrimination. To date, the County of Office Personnel has not complied with the studies' recommendations to raise the wages of all undervalued jobs, and the librarians have now filed EEOC charges.

(3) Enforcement of Federal Laws. Efforts to see Title VII of the Civil Rights Act enforced are increasing with the filing of administrative charges and lawsuits. Several federal court decisions such as IUE v. Westinghouse and the Supreme Court's 1981 decision in Gunther v. Washington explicitly state that Title VII of the Civil Rights Act does apply to wage discrimination cases in which men and women do not fill exactly the same jobs. These decisions are important sex-based wage discrimination victories because opponents of pay equity argued that the application of Title VII was restricted solely to equal work situations. The decisions are also significant because they made clear that sex-based wage discrimination is as illegal as wage discrimination based on race, national origin or religion.

The International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO (IUE) has been a leader in pay equity litigation. In early 1970, IUE filed the first pay equity lawsuit. In addition to the IUE v. Westinghouse case referred to above, which was affirmed by the Supreme Court at the same time it issued the Gunther decision, IUE has filed five other Title VII pay equity lawsuits against Westinghouse and one against General Electric. Five of the six suits filed against Westinghouse and the one against General Electric have resulted in settlements which include hundreds of thousands of dollars in back pay awards, and upgrading of the wages for predominantly female electrical assembly jobs, resulting in millions of dollars in future wages.

The American Federation of State, County and Municipal Employees, AFL-CIO, (AFSCME) has also been a leader on the pay equity issue in the courthouse. The AFSCME v. Washington State case, the leading current pay equity case, is the culmination of a 11-year struggle beginning in 1973 to remedy sex-based discrimination in public employment. The AFSCME v. State of Washington case showed in detail the kind of evidence that would generally result in a court finding of discrimination. In that case the court found that the evidence of discrimination in compensation was "overwhelming," and constituted "direct, overt and institutionalized discrimination." We submit that the practices found in that case are typical of the practices of virtually every employer -- private and public — where women have been traditionally employed.

(4) Federal, state and local government actions. The federal government is just beginning to examine its own evaluation system for sex bias against its female employees. At the request of Congress, the General Accounting Office is studying the federal compensation system and analyzing the factors involved in determining salary grade levels. The results of this study are expected to be useful as a tool for detecting discrimination in other kinds of compensation systems. But it is in state and local governments that major solutions for correcting sex-based and race-based wage discrimination are being pioneered. In a survey by the National Committee on Pay Equity, to be published soon, we have identified over one hundred government initiatives undertaken by school districts, counties, municipalities and state legislatures and agencies in at least 30 states.

Generally, the surveyed initiatives take the form of new laws or amendments, enforcement efforts, or executive branch policy decisions, and fall into the four following categories:

(1) Information and Data Collection;
(2) Job Evaluation Studies;

(3) Pay Equity Policies and Implementation; and
(4) Enforcement of Existing Laws.

III. Exploding Common Myths About Pay Equity

Although pay equity is rapidly becoming a reality, it faces substantial resistance. This resistance focuses on three major pay equity myths:

1. You cannot compare dissimilar jobs for the purposes of setting salaries (this is know as the "apples and oranges" argument);

2. You cannot interfere with the free market system by establishing comparable salaries (this is known as the "free market" or "everyone does it" argument);

3. You cannot pay women workers or minority workers what their jobs are worth because it will cost too much.

(1) Apples and Oranges: For decades, employers have been comparing dissimilar jobs for the purposes of establishing salaries. Modern employer-initiated and administered job evaluation systems were developed some 47 years ago to evaluate managerial jobs. These systems were used to create organizational hierarchies and to justify wage structures.

They were later used, with some revisions, to evaluate blue collar, service and clerical jobs.

Almost every large employer uses some method to evaluate the internal relationship of different jobs based on an objective evaluation of certain prerequisites or characteristics of the jobs relating to skill, effort, responsibility, and working conditions. Indeed, two-thirds of U.S. adult workers are paygraded by job evaluation schemes.[20/]

Judges have been comparing "apples and oranges" under the Equal Pay Act (EPA) for over 20 years. Frequently, a judge must determine on the basis of job content or job evaluation whether men's and women's jobs are "equal or substantially equal" within the meaning of the EPA. In Corning Glass Works v. Brennan, 417 U.S. 188 (1974), the Supreme Court specifically noted that employers had urged the protection of the job evaluation concept during passage of the EPA by insisting on the addition of the fourth affirmative defense in the EPA ("any other factor other than sex") to protect bona fide non-discriminatory job evaluation systems.

The federal government has also been involved in evaluating dissimilar jobs for the purpose of setting salaries. The U.S. Department of Labor has published the Directory of Occupational Titles (DOT) for decades. This is a ranking of jobs from what the Department believes to be the most important and most valuable to the least important and least valuable. The DOT has been offered to and used by thousands of firms as an aid in setting salaries.

It is interesting, therefore, to have the same employers who have been happily comparing dissimilar jobs for years suddenly say that job evaluation systems cannot be used to compare male-dominated and female-dominated jobs. They say that it is impossible to compare apples and oranges. The National Academy of Sciences in its study on pay equity, it is important to note, parts ways with these opponents in concluding that, difficulties aside, such comparisons are feasible as long as care is taken in collecting and analyzing information about jobs.

The pay equity issue emphasizes the need to design job evaluation systems that are free from sex or race bias: systems, if you will, that will pay the orange and apple equally for giving us the same amount of energy: systems which do not pay the orange less than the apple simply because it is not red.

(2) The "free market" or "everybody does it": The concern that social reforms will destroy our economic systems is not new. In the 1880s employers testified in the Massachusetts legislature that a proposed law would lead to chaos in the productive process, that employers would move out of the State, that the law would destroy the excellent relationship between employers and employees, and that it would lead the country into socialism. What was this terrible and dangerous legislation? It was a child labor law prohibiting children from working more than eight hours a day.[21/]

Employers opposing pay equity invoke a similar list of potential disasters, which primarily focus on the inviolability of the free market system. Essentially, employers claim that the free market syztem always has and always should determine wages: if it does not, economic havoc will ensue.

"Free market" or "everyone does it" is a bankrupt argument for the following reasons:

(a) There is no such thing as a pure free market.

As a society, we interfere consistently in the market place. Sometimes we interfere for economic reasons to protect employees because we have certain social values. For example, we have child labor laws because we think that it is more important to educate children than to employ them. We have wage and hour laws limiting the number of hours people are allowed to work and setting minimum wages because we feel that the life of our citizens should include a certain amount of leisure as well as a living wage. And, we have anti-discrimination laws that say "thou shalt not pay women or blacks or Hispanics less simply because you can get them cheaper, because they are desperate for jobs."

It is not just the government, however, that "interferes" in our so-called "free market." Employers also actively interfere. In Boston, 9 to 5 discovered the existence of something called the Boston Survey Group. This is a group of employers of clericals which met to fix the wages of clerical jobs in order to keep clerical salaries artificially low. The law of supply and demand, supposedly sacrosanct to employers and often used to fight the concept of pay equity, was conveniently ignored in this process.

(b) Sex bias in "market wage rates."

The most common way of establishing a salary is by paying what other employers pay for a similar job. This is called paying market wage rates. The use of these rates, however, does not reflect the value of the job relative to other jobs in the same firm and may well reflect prior discrimination by other employers or by society as a whole. In effect, reliance on the market wage rate is one important way through which the depression of wages of women and minorities is transferred from employer to employer.

Supporting this concept, a main conclusion of the NAS analysis of labor markets in its pay equity study was that "observed market wages incorporate the effects of many institutional factors, including discrimination."22/

(c) Biased response to the market place.

Employers often respond differently to market situations depending on the sex or race composition of the jobs for which they are setting wages. According to market theory, when there are shortages in occupations, the salaries of these occupations should rise. There is a great deal of evidence, however, to suggest that this often does not occur when the occupation is female-dominated or dominated by minorities.

The well known and long-time shortage of nurses -- in this vastly underpaid profession -- vividly illustrates that supply and demand can have little effect on the wages of female-dominated professions. Some hospitals have gone to the extent of recruiting nurses in the Phillipines rather than paying nurses a fair wage.

The courts have repeatedly declined to sanction the defense that "others do it" as an excuse for law-breaking. The Supreme Court and various lower courts have specifically rejected the market defense. The Supreme Court's comment concerning EPA claims in Corning Glass, supra, is just as applicable to claims of sex-based or race-based wage discrimination in different jobs.

> The differential . . . reflected a job market in which Corning could pay women less than men for the same work. That the company took advantage of such a situation may be understandable as a matter of economics, but its differential nevertheless became illegal once Congress enacted into law the principle of equal pay for equal work.
>
> The whole purpose of this Act was to require that these depressed wages be raised in part as a matter of simple justice to the employees themselves, but also as a matter of market economics since Congress recognized as well that discrimination in wages on the basis of sex "constitutes an unfair method of competition." (at 205, 207, emphasis added)

In Norris v. Arizona Governing Committee, 671 F.2d 330, 335 (9th Cir. 1982), affd. in relevant part, rev'd in part, 51 U.S. Law Week 5243 (1983), the court states:

> Title VII has never been construed to allow an employer to maintain a discriminatory practice merely because it reflects the market place . . .

(3) Cost. The third pay equity myth involves the issue of cost. According to opponents of pay equity, increasing women's salaries would lead to economic chaos. Employer advocacy organizations have estimated that the cost of implementing pay equity would range from $2 billion to $150 billion. This is quite a range, the high estimate being 75 times larger than the low estimate. It is an estimate that makes us question the accuracy of employer predictions.

We note that the same cost arguments were raised at the time of the passage of the Fair Labor Standards Act, the Equal Pay Act, and the Pregnancy Discrimination Act. We are not aware of any employers who have gone out of business because they had to comply with these pieces of legislation.

Pay equity advocates are concerned about cost. But we are interested in dealing with accurate figures in a reasonable manner. In the state of Minnesota, for example, the Council on Economic Status of Women prepared a report on pay equity. This report included specific figures for the cost of achieving pay equity and identified a variety of salary pools which could fund pay equity increases. Contrary to employer cost predictions, the hard data in Minnesota indicated that pay equity increases would only amount to between 2 and 4 percent of the total budgeted for state salaries.

Convincing evidence was presented regarding the costs in litigation fees for fighting a similar reform within the Minnesota State university system. In that case, the litigation cost more than the amount needed to raise the salaries of women's wages. As a result of this information and the pressure of AFSCME and women's organizations, the legislature passed a bill establishing a process and timetable for closing the gap.

New York State and the Civil Service Employees Association (AFSCME) are also dealing with the cost question responsibly. Their pay equity study will include economic forecasting to project State revenues as well as to assess potential costs of closing any wage gap related to sex or race segregation. In addition, the National Committee on Pay Equity is embarking on a survey of those employers who have done job evaluation studies and adopted implementation plans in order to determine actual costs so that cost discussions can be dealt with on the basis of facts and figures rather than ideology.

Those employers who are voluntarily implementing pay equity are making the wise and fair decision. Our history of economic reforms makes it clear: adjustment is easier for employers who voluntarily comply with our laws. If employers wait to be forced to pay non-discriminatory wages, they will not have the opportunity to cooperatively phase in salary increases, no matter how expensive these increases may be. Washington State has learned this lesson the hard way, as a result of not voluntarily implementing its own study in 1974. It now faces an estimated $1 billion price tag as the result of court order in order to achieve pay equity.

But, finally it is critical to remember that the cost of correcting discriminatory practices is no justification for violating the law. Women employed by the Los Angeles Department of Water and Power filed suit in Los Angeles Department of Water and Power v. Manhart, 435 U.S. 702 (1978), because their employer required them to contribute more than men to the pension plan since according to actuarial tables women live longer and so receive more in pension benefits. By requiring women to contribute more than men, Los Angeles was arguing that it was recovering its anticipated costs.

In 1978, the Supreme Court ruled in this case that the cost of correcting discriminatory parctices is no justification for violating Title VII. In its ruling the Supreme Court stated that the argument of the employer:

> might prevail if Title VII contained a cost justification defense comparable to the affirmative defense in a price discrimination suit. But neither Congress nor the courts have recognized such a defense under Title VII. 435 U.S. 702, 716-717 (1978).

Finally, as the court emphasized in AFSCME v. State of Washington, 33 FEP Cases 808, 824, (1983) "Defendants' preoccupation with its budget constraints pales when compared with the invidiousness of the ongoing discrimination . . ."

IV. Failure of Federal Government to Enforce Civil Rights Laws to Achieve Pay Equity

While private parties have enjoyed some success in eradicating sex-based wage discrimination, the federal agency charged with enforcement of Title VII — EEOC — has made no effort to eradicate this type of discrimination. Shortly after the Supreme Court issued its decision in the Gunther case in 1981, EEOC adopted the recommendation of its Office of Policy Implementation to "provide interim guidance to field offices on identifying and processing sex-based wage discrimination charges under Title VII and the Equal Pay Act in light of the holding" in Gunther. That EEOC memorandum set forth comprehensive procedures for "investigating" and "evaluating sex-based wage claims" and also provided that "counseling of potential charging parties should be expanded to reflect it is still in effect." Yet EEOC has done nothing to implement this direction. In fact EEOC has refused to investigate the hundreds of sex-based wage discrimination charges that have been filed with it and continues to ignore its own investigatory procedures for processing such charges.

Moreover, EEOC has refused to adopt any of the recommendations put forth by the National Committee on Pay Equity — suggestions that if implemented, would demonstrate EEOC's commitment to this issue and result in a more aggressive pursuit of pay equity charges.[23/]

With regard to AFSCME v. State of Washington, the leading current pay equity case, which EEOC Chair Thomas has called a "straight Gunther Title VII case," Assistant Attorney General for Civil Rights, Bradford Reynolds, has stated — without having reviewed any part of the record — "I have absolutely no doubt his (the judge's) decision is wrong."[24/]

Linda Chavez, the Director of the U.S. Civil Rights Commission has indicated her opposition to comparable worth and has characterized it as a "radical idea."

The Reagan Administration's Labor Department, on August 13, 1982, accepted a totally inadequate settlement of a pay equity case brought by the Carter Administration under the leadership of Labor Secretary Ray Marshall and Assistant Secretary for Employment Standards Don Elisburg against Kerr Glass Manufacturing Corporation — the first Gunther-

type complaint of sex-based wage bias filed by a federal agency. Despite a 122-day trial in 1979, the Reagan Administration's Department of Labor Office of Federal Contract Compliance Program accepted a settlement involving no backpay and no upgrading of female-dominated jobs, and agreed that the Department would not take any action based on the Kerr job evaluation system until at least 1985.[25]

V. Recommendations for Congressional Action To Achieve Pay Equity

Because of the persistence of the wage gap between men's and women's jobs, despite significant economic changes and despite the enactment of important anti-discrimination legislation over the past 20 years, working women all over the country have begun to search for, and demand, new solutions to this unrelenting economic discrimination. The link between pay equity and the gender gap is significant. Simply put, pay equity -- the major economic issue that women confront today -- appeals to and unites working women. More and more women in 1984 will be voting their pocketbooks and demanding solutions to the wage gap, and the related issue of the "feminization of poverty."

We are aware of the many recent efforts taken by this Congress to take steps to achieve pay equity. We are grateful for the support that many of you have shown and the willingness to help eliminate the serious wage disparities between men and women and minorities and non-minorities. We hope to be able to work closely with you to devise the best and most concrete solutions to these problems.

The biggest obstacle to eliminating discrimination and achieving pay equity is the lack of adequate enforcement of Title VII of the Civil Rights Act and Executive Order 11246, the federal statutes that prohibit wage discrimination on the basis of sex, race, or national origin. The problem at the national level is not one of needing more legislation.[6] The laws are clear in their applicability to pay equity.[7] To provide guidance to those Members of Congress who would like to express their commitment to working women by taking pay equity action, we present the following suggestions which were adopted by the members of the National Committee on Pay Equity.

We need to ensure that those agencies responsible for upholding the laws, do so. To this end, there must be the appointment of staff and officials who are committed to full enforcement of the Civil Rights Act and the Executive Order to positions in enforcement, personnel and budget in the U.S. Department of Justice, Office of Federal Contract Compliance Programs, Equal Employment Opportunity Commission and the Office of Personnel Management.

Without Congressional insistence on the appointment of officials strongly committed to upholding the law, the wage gap will continue to exist, and in fact, may worsen. In addition, Congress as part of its oversight function, must demand that EEO enforcement agencies earmark funds to litigate race- and sex-based wage discrimination cases.[8] We also urge this Committee to make known to EEOC its view that EEOC should immediately implement its existing directive on investigating pay equity charges and should develop its pay equity policy on a case-by-case basis as it has done in many other areas. The issuance of guidelines and broad policy statements concerning the theoretical outer parameters of the Supreme Court's Gunther decision is totally unwarranted. EEOC should concentrate first on the thousands of sex-based wage discrimination cases that fall well within the confines of the Gunther and IUE v. Westinghouse decisions. Guidelines are merely a smokescreen for doing nothing.

Members of Congress, themselves, can take important steps by appointing expert legislative and administrative staff who are knowledgeable about relevant economic, employment and training issues relating to pay equity.

The National Committee on Pay Equity believes that a sincere commitment to pay equity requires the establishment of a policy of pay equity in all employment and training programs to insure that female-dominated and minority-dominated jobs receive appropriate salaries. It should be a goal of all Members of Congress to see that equal pay for work of comparable value is institutionalized in all such programs.

Labor unions and advocacy groups should be involved in all enforcement agency efforts to eliminate wage discrimination. These organizations represent the men and women who have been victims of discrimination.

Members of Congress can take an important role in encouraging private employers to undertake voluntary compliance programs to achieve pay equity. Lawsuits become necessary only when voluntary compliance fails. In addition to their lawmaking powers, Members of Congress have at their disposal an enormous capacity to educate the public about pay equity and the need for enforcement of wage discrimination laws through the media, hearings, speeches, publications, and conferences. They can also encourage their constituents to use existing law by filing charges and lawsuits based on wage discrimination.

Congress should also ensure the implementation of pay equity for federal employees as mandated by the Civil Service Reform Act of 1978, in conjunction with federal labor unions. To this end, Congress must provide necessary funds to implement pay equity in the federal government. A fundamental step toward pay equity is a joint labor-management study of the Federal Civil Service.

As an employer itself with authority over various legislative agencies, including the Library of Congress, the Government Printing Office, the Government Accounting Office and the Congressional Budget Office, Congress should be concerned about discriminatory wage rates in these agencies. We therefore urge this Committee to encourage the appropriate congressional committee to have Congress set an example for the rest of the public sector and the private sector by retaining an independent job evaluation expert to investigate possible wage discrimination within these legislative agencies.

Finally, Members of Congress should urge the EEOC and the Justice Department to file an amicus curiae brief or to intervene on behalf of the victims of discrimination on the appeal of the AFSCME v. State of Washington case. EEOC and Justice have a legal duty to enforce the law as interpreted by the Supreme Court in Gunther and IUE v. Westinghouse.

Conclusion

The National Committee on Pay Equity urges the Joint Economic Committee to issue a report on pay equity documenting the devastating cost of sex- and race-based wage discrimination -- costs to the workers, their families, and to society as a whole.

This Administration has shown its total contempt for strong enforcement of civil rights and anti-discrimination laws. We therefore urge that the Joint Economic Committee make clear that this Administration's abdication of its statutory obligation to enforce the civil rights laws will not be tolerated and that Congress will exercise a vigorous oversight role to ensure that the laws of the United States will not be flagrantly violated without severe consequences.

In the face of the total refusal of the executive branch of the government to care about discrimination, the National Committee on Pay Equity salutes those members of the legislative branch who are doing more than giving lip service to women's and minorities' wage issues -- those who are taking concrete steps to find and get rid of sex-based and race-based wage discrimination.

FOOTNOTES

1/ Attachment 1.

2/ The Wage Gap: Myths and Facts, National Committee on Pay Equity, 1983, appended to this testimony as Attachment 2.

3/ Id.

4/ Id.

5/ Id.

6/ Id.

7/ Id.

8/ Id. Also see fact sheet on Women of Color and Pay Equity, National Committee on Pay Equity, 1984, appended to this testimony as Attachment 3.

9/ Id.

10/ Id.

11/ Women, Work, and Wages: Equal Pay for Jobs of Equal Value. National Academy Press, Washington, D.C. 1981, p. 28.

12/ Id. at pp. 41-41.

13/ Wilson, Carole, Breaching the Barricade: Pay Equity for Women, The Union for Democratic Action Education Fund, Inc., 1981, p. 1.

14/ Deindustrialization and the Two Tier Society: Challenges for An Industrial Policy, Industrial Union Department, AFL-CIO, 1984, p. 39.

15/ Wilson, Carole, Breaching The Barricade: Pay Equity for Women, supra, p. 1.

16/ Deindustrialization and the Two Tier Society: Challenges for An Industrial Policy, supra, p. 29.

17/ For a detailed list of labor union pay equity initiatives, see Highlights of Recent Labor Union Efforts to Achieve Pay Equity, National Committee on Pay Equity 1983, appended to this testimony as Attachment 4.

18/ Wilson, Carole, Breaching The Barricade: Pay Equity for Women, supra, p. 3-4.

19/ Id., p. 4.

20/ Patterson, Thomas T., Job Evaluation (London Business Books, 1972) at p. xi: Katz, Paul, "Comparable Worth," Federal Service Labor Relations Review, Spring 1982, pp. 38-39.

21/ Brandeis, Elizabeth, Labor Legislation, Volume 4, in John Commons (ed.). History of Labor Legislation in the United States, New York: McMillan.

22/ Women, Work and Wages: Equal Pay for Jobs of Equal Value. supra, p. 65.

23/ Recommendations to the Equal Employment Opportunity Commission, National Committee on Pay Equity, appended to this testimony as Attachment 5.

24/ New York Times, January 22, 1984.

25/ Consent Decree, Case No. 77-OFCCP-4, U.S. Departmen of Labor (August 13, 1982) at pp. 3, 5, 6, and 12.

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HIGHLIGHTS OF RECENT LABOR UNION EFFORTS TO ACHIEVE PAY EQUITY[1]

Labor unions have been among the leaders of the movement for pay equity. Twelve international unions, the Coalition of Labor Union Women, the Coalition of Black Trade Unionists, the Industrial Union Department of the AFL-CIO, and the George Meany Center for Labor Studies are members of the National Committee on Pay Equity, the only national coalition working exclusively to achieve equal pay for work of comparable value.

Listed on the following pages are examples of the types of initiatives unions have taken around pay equity. The categories are not mutually exclusive and the list is by no means exhaustive either in the types of initiatives taken nor in their number. The following categories are included:

- Labor Union Policies
- Union Conducted Wage & Job Studies
- Negotiated Joint Labor Management Job Evaluation Studies
- Wage Equity Increases
- Legal Action
- Political Activity

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[1] Almost all of these examples are excerpted directly from the testimony submitted by individual unions to the Congressional Pay Equity Hearings in September 1982.

Labor Union Policies

- The AFL-CIO, many international unions, locals, and other organizations of working people have passed resolutions in support of pay equity.

- The American Nurse's Association reports that five state nurses' associations in Florida, Massachusetts, Pennsylvania, New York, and California, are now taking the bargaining positions that specific comparable worth provisions must be included in all their contracts with health care employers.

- The bargaining recommendations of the Newspaper Guild urge that "Locals should give special attention to wage improvements in clerical wage classifications to bring these rates up from substandard levels where necessary."

  Another recommended bargaining goal is that "Locals should establish minimums reflecting the true differentiation in job content..."

  More directly, equal pay for equal work or work of equal value is a mandatory collective bargaining proposal which must be made each time a Local enters into negotiations.

Union Conducted Wage and Job Studies

- The American Federation of Teachers (AFT) representing University of California librarians, conducted a study comparing librarians with comparable academic, non-teaching jobs in the university system.

- In 1975, the Communications Workers of America (CWA) established a Job Value Analysis Committee to examine the content of Bell System jobs. The committee paid special attention to clerical jobs, many of which may have been undervalued by the Bell System over the years through job segregation and wage discrimination. The committee found a lack of uniformity in job titles, an excessive number of job titles, and an overly narrow clustering of pay rates, especially for clerical jobs.

  Some of these problems were righted in 1977 and 1980 bargaining when CWA eliminated most of the unoccupied titles, reduced the number of clerical wage groups and upgraded the Service Representative and Operator classifications.

- Pay equity has become the focus of activities for members of the Associated Clerical, Office, Laboratory and Technical Staff (ACSUM), part of the Maine Teachers Association, an National Education Association (NEA) affiliate. Ninety percent of the 1,000 "classified" employees who work at the University of Maine's seven campuses are women. An employee sponsored job survey at Orono, where over half the classified employees work, revealed in 1979 that two-thirds of the employees in the ten lowest wage categories were female. No woman held a job in the top eight wage categories at the university.

  Support staff at this university are planning further investigations into some inequities. They are now proposing to compare their wages with those of other state employees, whose salaries are higher in a number of job categories which are the same, or are substantially similar, to those jobs held by the university employees.

Negotiated Joint Labor Management Job Evaluation Studies

- The Civil Service Employees Association (AFSCME), representing 100,000 New York State employees, has negotiated $500,000 to do a pay equity study. The study will examine both sex- and race-based wage differentials. It will also include an economic forecast for the State of New York, so that the parties can plan for orderly implementation of the results.

- One outcome of the 1980 national collective bargaining agreement between CWA and the Bell System aimed at addressing the issue of comparable worth was the formation of a joint national CWA/AT&T Occupational Job Evaluation (OJE) Committee, comprised of three Union and three management representatives. The Committee was charged with the responsibility to research, develop and make recommendations concerning the design and implementation of a job evaluation plan for non-management workers in the Bell System. Once a plan is developed, the Committee will jointly recommend the plan to the CWA and AT&T national bargainers, who will make the final decision to accept, modify or reject the plan.

  The joint OJE Committee has been working to develop a job evaluation plan that will achieve an equitable wage structure for all workers, both male and female, compensating for many of the inequities caused by technological change.

Wage Equity Increases Through Collective Bargaining Greivance Procedure and Arbitration

- AFSCME has won pay equity increases in San Jose California. San Jose municipal employees, members of AFSCME Local 101, struck for 9 days in July 1981 and then ratified a contract which provides for across the board wage increases for 2000 city workers of 7.5% the first year and 8% the second year. Also won were wage equity increases of $1.5 million for 60 predominantly female and mixed jobs ranging from 5 to 15% over two years.

  In 1979, over 200 clerical workers, members of Local 101 in San Jose, held a "sick-out" and the city agreed to a joint labor-management job evaluation study. Study results showed that predominantly female jobs were paid 15% less on the average than traditionally male jobs of comparable worth. In negotiations, the city was reluctant to implement the study results and sought to take equity increase from general salary raises. Rallies, educationals, testimony, a march, public pressure, the filing of EEOC charges, and eventually the strike were necessary to bring victory.

- In the State of Illinois, AFSCME Council 31 was able to obtain a pay increase through arbitration for word processing equipment operators. The state evaluated the job and decided it should be raised one grade. The union felt that was insufficient and hired its own job evaluation specialist, who compared the job to a variety of other jobs and determined that it was still undervalued. The arbitrator in a 1981 ruling agreed with the union's expert and as a result about 300 word processing equipment operators received about $1,000 more than they would have received had the state's position been upheld.

- The 1981 contract between the State of Connecticut and the New England Health Care Employees Union, District 1199, RWDSU, calls for the State to establish a pay equity fund equivalent to one percent of the healthcare workers' payroll with stipulations that it be used in the first year to begin to correct internal inequities.

- In 1971 The Newspaper Guild set a priority wage goal of achieving wage parity for inside classified telephone salespersons, historically women, with the top wage classifications. Those top classifications include outside classified and display salespersons who sell advertising in person. The inside classified salesperson uses the telephone to sell.

In 1970, the average weekly wage of inside classified sales was 62.2% of the outside display sales weekly wage. As of August 1982 the average weekly wage of inside classified sales rose to 67.5% of the outside sales.

To date one publisher, the Maui News has agreed to wage parity in the inside-outside advertising sales under the Hawaii Guild contract. Several others have narrowed the disparity. For examples, the Pacific Northwest Newspaper Guild reached an agreement with the Tacoma Tribune in 1981 which boosted the inside classified sales wage to within 90.3% of the outside sales. In 1970 the inside classified sales was 57.2% of the outside sales. And the San Jose Newspaper Guild increased the inside sales wage to within 76.9% of the outside sales wage in a 1980 agreement with the San Jose Mercury & News. In 1970 the inside weekly earnings was 64.8% of the outside sales.

- In 1972 in negotiations with Kaiser hospitals, SEIU Local 399 won significant catch-up wages and successfully demonstrated that "light cleaners"--a classification primarily for women responsible for cleaning rest rooms and offices-- and "heavy cleaners"-- a primarily men's classification responsible for waxing floors--were equivalent jobs. The "light cleaner" job was upgraded so that women no longer receive less money for work requiring comparable skill, effort, and responsiblity.

- Last summer in Pennsylvania, 2,000 clerical and technical members of SEIU Local 585 went out on strike to win an across-the-board increase of $1,032.00 which brought their wages closer to comparable jobs elsewhere in county employment. SEIU members received the support of sister trade unions in demanding wage increases which were 3% above those received by other county units by pointing out the need to catch up to decent wage standards.

Legal Action

- Almost 10 years ago, AFSCME Council 28 persuaded the State of Washington to investigate whether female-dominated jobs paid less than male-dominated jobs requiring comparable skill, effort and responsibility. The study -- the fi[illegible] pay equity study -- showed that female-dominated jobs paid on the average about 20 percent less than comparable male-dominated jobs. The state refused to comply with the recommendations of its own Personnel Board and raise wages. AFSCME filed sex discrimination charges with the EEOC, and on July 20, 1982, a multimillion dollar lawsuit was filed in federal district court. The case --- the first of its kind --- will be heard August 29, 1983.

In addition to the case in Washington, AFSCME has pending charges or lawsuits against the States of Hawaii, Wisconsin and Connecticut and the Cities of Los Angeles, Chicago and Philadelphia.

- At its 1972 convention, the International Union of Electrical Workers(IUE) initiated a Title VII Compliance Program because it found that collective bargaining was often not sufficient to remedy sex discrimination. The program involved educating members and staff, and research on jobs and wages by sex and race.

  Under this program if the employer refuses to bargain, the IUE has filed National Labor Relations Board charges along with complaints under Title VII and/or Executive Order 11246. In addition, the IUE has worked closely with federal agencies. Under the Carter administration, the EEOC adopted a "Resolution on Title VII and Collective Bargaining" which encouraged union participation in affirmative action.

  The International Union of Electrical Workers has been a leader in comparable worth litigation. In addition to the IUE v. Westinghouse case, the union filed 5 other Title VII pay equity lawsuits against Westinghouse. Five of the 6 suits filed have resulted in settlements which include substantial back pay awards and significant upgrading for predominantly female electrical assembly jobs.

Political Activity

- The American Federation of Government Employees (AFGE), National Federation of Federal Employees (NFFE) and National Treasury Employees Union (NTEU) testified before Congress in September 1982 about wage discrimination against women in federal employment.

- AFSCME gave strong support for the passage of legislation in Minnesota that establishes pay equity as policy for state employees and requires that a part of the funds appropriated for salary adjustments for state employees be used to correct pay disparities for female-dominated jobs.

AFSCME is also a member of the Minnesota Council on the Status of Women which conducted the study that exposed pay inequities in the State's pay structure and that led to passage of the pay equity bill in 1982.

- This past year, the Los Angeles Unified School District was asked by the United Teachers of L.A. (NEA/AFT) and other organizations to conduct a comparable worth study of the district's wage scale. An options analysis paper prepared by the school district's Commission on Sex Equity demonstrated that even a superficial assessment would reveal systematic underpayment of traditionally female job categories.

  The school board voted 5-2 to defeat the proposal. The two votes in favor of the study were cast by the only females on the Board. While these two women had been political opponents on many issues, apparently their own experiences gave them a sensitivity to the issue of undervalument of job worth that their male colleagues did not share.

- The United Auto Workers (UAW) has expressed much of its support for pay equity through its political activity and its leadership in coalitions. The UAW participated in a broad coalition which struggled seventeen years for the passage of the 1963 federal Equal Pay Act, which, in draft, originally included comparable worth language. The UAW has also been active in a state-wide pay equity coalition in Michigan.

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RECOMMENDATIONS TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Introduction

The National Committee on Pay Equity calls on the EEOC to move to eliminate wage discrimination against predominantly female and minority jobs, specifically by fully enforcing the legislative prohibition against wage discrimination under Title VII of the Civil Rights Act.

The National Committee on Pay Equity is a coalition of individuals, labor unions, women's and civil rights groups, educational associations, state and local government agencies and others. It is dedicated to achieving pay equity. It provides leadership and assistance in order to stimulate pay equity initiatives in the areas of organizing, collective bargaining, research, state and local legislation, and enforcement of existing laws.

This document sets forth specific recommendations which we believe the EEOC can and should adopt in order to be in compliance with its legislative mandate to enforce the prohibition against "discrimination in compensation" embodied in Title VII of the Civil Rights Act of 1964. We believe that the EEOC is not presently meeting this obligation. We have updated the document to reflect such changes as have occurred in the status of our struggle to achieve pay equity.

The Judicial Setting

In June, 1981, the United States Supreme Court issued its decision in Gunther v. County of Washington. Gunther provided unequivocal confirmation of the position advanced by many advocate groups and adopted by several courts that wage discrimination against women who hold jobs which may not be substantially equal to those held by men, like all other forms of actionable discrimination under Title VII, is barred by the Civil Rights Act of 1964. Since the issue before the Supreme Court in Gunther was a narrow one, the Court deliberately left open several questions as to the form and type of proof necessary to establish a wage discrimination violation under Title VII. Lower courts, however, both before and after Gunther have acted to fill that void. Thus, a wealth of case law establishes that plaintiffs may make out a showing of wage discrimination by presenting evidence of intentional discrimination in the wage-setting process itself[1] or with respect to other aspects of job selection and assignment which directly impact on wage-setting.[2] In other cases, courts have relied upon relevant statistical evidence to find a pattern or practice of wage discrimination.[3] Finally, courts have applied the Griggs-type disparate impact analysis to claims of wage and benefits discrimination against women.[4] That is, they have found unlawful discrimination where the effect of an apparently sex-neutral wage policy was disproportionately low wages for women.

EEOC Actions

While the lower courts have acted promptly and decisively to answer the questions left open by Gunther, over the past year the EEOC has failed to provide the guidance and leadership which Title VII demands of it in the area of wage discrimination. Before Gunther, the EEOC commissioned a study by the National Academy of Sciences to determine both the manner in which conventional wage-setting practices operate to discriminate against women and the feasibility of creating bias-free wage-setting mechanisms. The results of that study were published in the fall of 1981, shortly after the Gunther decision, and provide a sound basis upon which the Commission could rely in investigating charges of wage discrimination. Equally important, this pre-eminent NAS study should serve as the basis for policy development by the Commission in this important area of discrimination. To date, however, the Commission has largely ignored the findings of the study.

Similarly, the Commission held a series of hearings on wage discrimination and job segregation in the spring of 1980. These hearings provided a wealth of information for the Commission to utilize in processing individual charges, developing systemic targets for investigation and litigation, and formulating sound policy in this area. Again, however, the Commission has merely published the transcripts of these hearings; it has taken no action to date in the form of issuing findings from the hearings or implementing any new initiatives based on the hearings or the NAS study.

From a litigation perspective, the Commission participated as amicus in Gunther, IUE v. Westinghouse, and Kouba v. Allstate.[5] It is our further understanding that the Commission may have participated in some way in a few other wage discrimination cases over the past three years. This participation was not publicized. Thus, as was true with the National Academy of Sciences study and with the wage discrimination hearings, the EEOC has dropped the ball in the area of litigating wage discrimination cases. The Supreme Court has spoken in Gunther, several circuits have rendered favorable decisions, and a number of lower court cases are pending. In light of the developing case law, and keeping in mind that in Los Angeles Department of Water and Power v. Manhart,[6] the Supreme Court was critical of the Commission for its failure to provide guidance, it is incumbent upon the Commission to assume the leadership in this area.

Indeed, the only positive enforcement action which the Commission has taken in the wake of Gunther was the issuance on September 15, 1981, of a 90-day notice to "provide interim guidance in processing Title VII and Equal Pay Act claims of sex-based wage discrimination." That notice has been renewed every 90 days since its original promulgation, and thus represents the policy to which the EEOC has committed itself with respect to processing wage discrimination claims. While the National Committee believes that certain sections of the 90-day notice warrant further consideration and fleshing out, it represents for the most part a sound document and policy initiative upon which the Commission should continue to rely. However, it is only a first step and the time for additional action by the EEOC is long overdue.

National Committee on Pay Equity Recommendations to the EEOC

The National Committee for Pay Equity strongly urges the Commission to undertake the following steps immediately to assure that wage discrimination investigations, litigation and policy development under Title VII again move forward promptly, decisively and equitably. We recommend that the Commission consult with the National Committee on Pay Equity on an ongoing basis.

(1) The Commission should vigorously enforce the policy embodied in the 90-day notice issued on September 15, 1981. Wage discrimination charges should be investigated fully, in accordance with the instructions supplied under the heading "Investigating Charges." The Commission should, on an on-going basis, review the 90-day notice to determine where and how it may be enlarged upon and clarified in order to provide more precise guidance to the regional EEOC offices which perform the initial investigation of charges. As part of its review of the 90-day Notice, the Commission should determine the manner by which the findings of the NAS study as well as its own hearings will be integrated into this basic policy document and form the basis for further guidance for the field.

(2) Because the development of wage discrimination policy and litigation is still embryonic, it is essential that charges filed in the field offices receive careful and specialized review to determine the appropriate processing mode. Under present procedures the Commission treats potential lawsuits, charges against public institutions, and preliminary relief cases in this manner. The Commission should give all wage discrimination charges such attention. This means that EEOC intake staff should be trained in the identification of wage discrimination charges; lawyers or wage specialists should assist in the intake interviews, where possible, of wage discrimination claimants; the intake supervisor should carefully review all charges designated as wage charges prior to assignment to any processing unit; and, where appropriate, high-level management in each field office should become involved at critical stages of decision-making with respect to wage discrimination charges.

Tight time frames should be instituted in the review and processing of wage discrimination charges. The Commission should carefully monitor the process at each step to ensure that these time frames are met.

In addition, the Commission should provide to the National Committee on Pay Equity information on a regular basis about the number of wage discrimination charges filed and the number of those cases that the Commission has decided to pursue. To the extent that this information cannot be provided without a change in the Commission's reporting system, the Committee would recommend that the reporting system be changed.

(3) The 90-day notice requires that wage discrimination charges be referred to Headquarters for review in order to enable the Commission to develop uniform law and policy in this area. However, the experience of many constituent members of the National Committee who assist individuals in filing Title VII charges or engage in monitoring of field offices has shown that, contrary to the policy embodied in the 90-day notice, individual field offices have failed or refused to refer charges to Headquarters. The Commission should establish a mechanism for assuring that all wage discrimination charges received by field offices are referred to Headquarters.

(4) A Headquarters task force, similar to the Pregnancy Litigation Task Force, should be established for the purpose of reviewing wage discrimination charges; developing investigative techniques; and formulating wage discrimination policy. The task force should be composed of representatives from those units most directly affected by and expert in the area of wage discrimination, i.e., the Office of Program Operations, including specifically the Systemic Unit; the Office of Program Research; the Office of Legal Counsel; and the Office of General Counsel, including specifically the Appellate Division.

In addition, the National Litigation Plan recently proposed by the General Counsel should include wage discrimination as one of its priorities. Those developing the Plan should work in conjunction with this Task Force so that a wage discrimination litigation strategy will actually be implemented. District offices should be assessed on the basis of the number of wage discrimination cases which are processed.

(5) Each appropriate unit in Headquarters should be assigned specific tasks in the area of wage discrimination. Thus, for example, the Systemic Unit should be directed to develop systemic targets, with an eye to engaging in systemic litigation of wage discrimination claims. The Office of Program Research should undertake research and planning in the following areas: the manner in which the so-called "free" market affects wage-setting, how the market may be manipulated or used to create or maintain a discriminatory wage structure; the sources of bias in job evaluation and other wage-setting mechanisms; an identification of industries and jobs, similar to that which the Commission undertook under the Equal Pay Act, where wages are likely to be depressed because of sex and/or race discrimination; and the various indicia of historical or present intentional discrimination in wage-setting. The Office of Program Operations should retain professional job evaluators to develop training materials for investigative staff in the field.

The National Committee strongly urges the Commission to consider these proposals both seriously and favorably.

FOOTNOTES

[1] See, e.g., *Gunther v. County of Washington*, 602 F.2d 882 (9th Cir. 1979), petition for reh. denied, 623 F.2d 1303 (1980), aff'd 452 U.S. 161, 101 S.Ct. 2242 (1981); *Fitzgerald v. Sirloin Stockade*, 22 FEP Cases 262 (10th Cir. 1980); *IUE v. Westinghouse*, 631 F.2d 1094 (3rd Cir. 1980); *Taylor v. Charley Bros.*, 25 FEP Cases 602 (W.D. Pa. 1981).

[2] *IUE v. Westinghouse* and *Taylor v. Charley Bros.*, supra; *Gerlach v. Michigan Bell Tel. & Tel. Co.*, 24 FEP Cases 69 (E.D. Mich. 1980).

[3] *Wilkins v. Univ. of Houston*, 654 F.2d 388 (5th Cir. 1981); see also *Heagney v. Univ. of Wash.*, 642 F.2d 1157 (9th Cir. 1981) (district court erred in excluding report which showed that among exempt employees, two times as many women as men had salaries below the mean expected base on the job evaluation while three times as many men as women had salaries higher than the expected mean.

[4] *Wambheim v. J.C. Penny Co., Inc.*, 642 F.2d 362 (9th Cir. 1981); *Neely v. MARTA*, 24 FEP Cases 1610 (N.D. Ga. 1980).

[5] *Kouba*, 691 F.2d 873 (9th Cir. 1982), was a classic equal pay case. It has, however, been termed as a wage discrimination case. It was the first post-*Gunther* case, and, indeed, arose in the Ninth Circuit, as did *Gunther*. *Kouba* was the first case in which there was an opportunity to address *Gunther* in a wage discrimination setting.

[6] 435 U.S. 702 (1978).

[7] In this regard, the National Committee notes with alarm the growing number of employers who justify discriminatory wage rates through reference to the market rate. The report by the National Academy of Sciences provides ample evidence that reliance on the market to set or defend wages embodies sex-based discrimination. Moreover, there is substantial evidence in individual cases, e.g., *IUE v. Westinghouse*, that the market rate has not been followed; rather, wage rates for women's jobs have been and are being deliberately depressed simply because the occupants of those jobs are women. The Commission's hearings on job segregation and wage discrimination also provide a strong evidentiary basis from which the notion that the market operates to set wages may be attacked. Witness after witness testified as to the unresponsiveness generally of the market to shortages in traditional women's jobs; the inability of women to negotiate for higher wage rates, despite the demand for their work; the near-universal pattern of women being paid less than the lowest-paid man in their workplace, regardless of the work done by each; and the various mechanisms utilized by employers to assure that women's wages continue to be depressed. Against this backdrop, it is clear that there is something at work which operates to maintain low wages for women workers, but it is not the invisible hand of Adam Smith. It is, rather, garden-variety sex discrimination of a type which the Commission has heretofore been unwilling to countenance.

APPENDIX B

NOTICE ADOPTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION TO PROVIDE INTERIM GUIDANCE TO FIELD OFFICES ON IDENTIFYING AND PROCESSING SEX BASED WAGE DISCRIMINATION CHARGES UNDER TITLE VII AND THE EQUAL PAY ACT

(ADOPTED FOR 90 DAYS ON SEPTEMBER 15, 1981)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

AUG 25 1981

MEMORANDUM

TO: J. Clay Smith, Jr., Acting Chairman
Daniel E. Leach, Vice Chair
Armando M. Rodriguez, Commissioner

THRU: Issie L. Jenkins
Acting Executive Director

FROM: Frederick D. Dorsey, Director FDDorsey
Office of Policy Implementation

SUBJECT: Ninety-Day Notice on
County of Washington v. Gunther

The attached Notice was jointly drafted by the Office of Policy Implementation and the Office of Field Services. It is intended to provide interim guidance to field offices on identifying and processing sex based wage discrimination charges under Title VII and the Equal Pay Act in light of the holding in the recent Supreme Court case of County of Washington v. Gunther. The subject matter of this Notice will be fully treated in an up-coming compliance manual section.

The attached Notice was circulated to Headquarters offices for review and comment and presented to SCEP. This document reflects their comments and suggestions.

EEOC

NOTICE

(Automatically Cancelled in Ninety Days)

NUMBER

DATE

1. SUBJECT. Interpretative Memorandum: County of Washington v. Gunther, ____ U.S. ____, No. 80-429 (U.S. Sup. Ct. June 8, 1981).

2. PURPOSE. This notice is intended to provide interim guidance in processing Title VII and Equal Pay Act claims of sex-based wage discrimination in light of the recent Supreme Court decision in County of Washington v. Gunther.

3. ORIGINATORS. Office of Policy Implementation and Office of Field Services.

4. EFFECTIVE DATE.

5. INSTRUCTIONS.

County of Washington v. *Gunther*

In *County of Washington* v. *Gunther*, female jail matrons contended that their Title VII rights had been violated because of intentional sex discrimination in that the county set their wage scale, but not the male guards' wage scale, at a lower level than its own survey of outside markets and the worth of the jobs warranted. At the district court level, the court found that the jobs performed by the female matrons were not substantially equal to those performed by the male guards; therefore, it dismissed the action concluding that sex-based wage discrimination claims could not be brought under Title VII without satisfying the equal work standard of the Equal Pay Act. The court of appeals affirmed, and the female matrons did not seek review of the determination that the jobs were not substantially equal. The court of appeals, however, reversed the district court's finding that sex-based wage discrimination claims must satisfy the equal work standard, and remanded holding that such claims can be brought under Title VII even though the jobs are not substantially equal. The Supreme Court granted certiorari and ruled that claims of sex-based wage discrimination can be brought under Title VII subject to the Equal Pay Act's four affirmative defenses, 1/ but that Title VII is not limited by the equal work standard found in the Equal Pay Act. Therefore, the female matrons' claim of intentional sex-based wage discrimination was not precluded under Title VII merely because they did not perform work equal to the male guards.

Thus, while pointing out that traditional concepts of equal pay for equal work under the Equal Pay Act are still applicable to sex-based wage claims, *Gunther* stresses that Title VII is applicable to claims of sex-based wage disparity without the necessity of showing that the jobs in question are substantially equal (i.e., non-Equal Pay Act compensation cases).In this respect, the decision brings sex-based wage discrimination claims into conformity (save for the applicability of the Equal Pay Act's affirmative defenses) with the Commission's consistently held position in this regard when the charge is based on race or national origin.

The *Gunther* court, in its narrowly drawn decision, did not rule on whether the female matrons were the victims of intentional sex discrimination, nor did it address the manner in which a prima facie case of wage discrimination on the basis of sex could be shown under Title VII. The Court decided only 1) that sex-based wage compensation claims can be brought under both Title VII and the Equal Pay Act; and 2) that, as indicated above, Title VII's coverage is broader than the Equal Pay Act's coverage. Without deciding the probable success or failure of what it termed "comparable worth" claims when they eventually do come before it, the Court noted that the concept encompasses claims by women for "...increased compensation on the basis of a comparison [generally with reference to market wage rate or a job evaluation system] of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community."

1/ The Bennett Amendment to Title VII found in §703(h) of Title VII provides that it is not unlawful for an employer to differentiate between employees on the basis of sex with regard to wages paid so long as such differentiation is *authorized* by the Equal Pay Act. Based upon the legislative history of Title VII, the Court interpreted *authorized* as subjecting Title VII sex-based wage claims to the following four Equal Pay Act affirmative defenses: seniority system, merit system, system based on quality or quantity of production, or any other factor other than sex.

IDENTIFYING AND PROCESSING CHARGES 2/

Both Title VII and the Equal Pay Act cover sex-based wage discrimination claims brought under the equal pay for equal work standard. Gunther now makes it clear that Title VII is also applicable to sex-based wage claims other than those involving equal pay for equal work. The EOS should, therefore, recognize the similarities and differences between the two statutes and be able to advise charging parties of their rights in this regard. Claims brought under the equal pay for equal work standard involve charges by women that their jobs are substantially equal with regard to the factors of skill, effort, responsibility, and working conditions in the same establishment, but are paid at a lower wage than jobs held by men. For example, a female telephone operator would compare herself with a male telephone operator, or other male performing substantially equal work regardless of job title, 3/ in the same establishment. The traditional Equal Pay Act comparisons and methods of proof, however, may not be applicable to Title VII charges of sex-based wage discrimination where the equal pay for equal work standard is not involved. In a charge brought under Title VII, a charging party could, therefore, attempt by other means to prove that her wage rate is depressed simply because she is a woman or is in a traditionally female job. She may not even allege that jobs are or were ever held by males for comparison purposes; that the jobs are substantially equal; or that the establishment is the same. 4/ The female telephone operator referred to above could conceivably disregard comparing herself to males if she is in a female only job category, or she could compare herself to a male telephone operator who works in another establishment of the same employer, as well as to a male who works in an entirely different job classification (i.e., a male elevator operator).

It is extremely unlikely that a charging party could make out a case of wage discrimination simply by comparing herself to a male in the same job, but employed by another employer. In some cases, however, such a comparison might be probative evidence of discrimination. For example, if Employer A sets the wages of his/her employees by a comparison to Employer B's wage scale, an employee of A may show that:

(a) She works in an all-female job category;

(b) At Employer B, men perform the identical job;

(c) The women at Employer A are paid less for doing the same work that men at Employer B perform; and

(d) All other male employees at Employer A are paid the same amount as all other male employees at Employer B.

The preceding fact situation would be relevant to a showing that Employer A had depressed the women's wages because of their sex.

The EOS should accept and investigate these charges under Title VII. (See Investigating Charges section below.) However, if the charging party

---

2/ As noted above, Title VII principles apply to the processing and investigating of wage discrimination charges regardless of whether they are based on national origin, race, sex, color, or religion. However, under the Bennett Amendment, the four Equal Pay Act affirmative defenses are only available to sex-based wage discrimination claims.

3/ As long as the jobs are substantially equal, Equal Pay Act comparisons can be made regardless of whether there are some differences in job content or whether the job titles are different.

4/ An employer can be an entity such as a city, county, or state government and comparisons can be made between its different agencies or units.

compares herself to a male employed by another employer, the Office of Policy Implementation should be contacted prior to determining how the charge should be processed.

In the future, since it is not always easy during intake to determine whether the equal pay for equal work standard can be met, counseling of potential charging parties should be expanded to reflect the scope of Gunther. Emphasis should be placed on the coverage of Title VII and the Equal Pay Act in the particular case and, if appropriate, the advantages of filing under both statutes, including the procedural and substantive differences between the two statutes. Unless the charging party specifically elects to proceed only under the Equal Pay Act, sex-based wage discrimination claims should be concurrently processed. At a later stage of processing, beyond the initial intake, a determination should be made whether the claim should continue to be processed under the Equal Pay Act, Title VII, or both. If the Equal Pay Act processing is discontinued because the equal work standard cannot be met, the charge should be referred to the CIC unit or the fact finding unit, as appropriate, for further processing under Title VII.

INVESTIGATING CHARGES

To aid in evaluating sex-based wage claims, the following information should be secured for respondent's work force or an appropriate segment of the work force, in documentary form, where available, and analyzed using investigative principles developed in equal pay cases (OPI should be contacted prior to investigation for assistance in defining the scope of the "Request for Information"):

1) A breakdown of the employer's work force by sex in terms of job classifications, assignments, and duties;

2) Written detailed job descriptions and, where appropriate, information gathered from an on-site inspection and interviews in which actual job duties are described;

3) Wage schedules broken down in terms of sex showing job classifications, assignments, and duties;

4) Any documents which show the history of the employer's wage schedules such as collective bargaining agreements which were previously in effect;

5) All employer justification of, or defenses to, the sex-based wage disparity;

6) If a job evaluation system is the basis for the sex-based wage disparity, the EOS should obtain copies of the evaluation and, if available, an analysis of its purpose and operation;

7) If market wage rate is the basis for the sex-based wage disparity, determine the underlying factors relied upon by the employer and the methods the employer used to determine the market wage rate;

8) If union collective bargaining agreements are the basis for the sex-based wage disparity, the EOS should obtain copies of those agreements; and

9) Any evidence which shows that the employer or the employer and union have established and maintained sex-segregated job categories.

NON-CDP ISSUES

The Gunther Court referred in its decision to three issues which are currently non-CDP. The first issue involves the requirements for a prima facie case of sex-based wage discrimination in claims brought under Title VII. The second issue concerns the application of the four Equal Pay Act affirmative defenses, with particular emphasis on the effect of the fourth defense ("any other factor other than sex"), to sex-based wage discrimination claims brought under Title VII. For example, once a prima facie case has been established, does reliance by the respondent on the open market wage rate constitute a factor other than sex, so as to render the respondent's action nondiscriminatory? The third non-CDP issue concerns claims of sex-based wage discrimination brought under Title VII that may be based on the concept sometimes referred to as "comparable worth." The following examples are representative, though not exhaustive, of the types of practices involving sex-based wage claims under Title VII, including those which come under the concept sometimes referred to as "comparable worth."

> Example 1 - R segregated its labor jobs by sex into two categories, assembly line (female) and craft (male). The jobs were then "point rated" based on a job evaluation system. Although, the jobs primarily held by females received the same "point rating" as the jobs occupied by males, R nonetheless set the wage rates lower on the jobs primarily held by females. CP, a female in a primarily female job category, filed a charge under Title VII alleging that she and other females at R's facility were intentionally discriminated against because of their sex.
>
> Example 2 - R uses a job evaluation system that looks at several compensable factors to aid in determing the worth of jobs. The factors of experience and extent of trade knowledge are rated exceptionally high, while education is rated exceptionally low. CP, a female with substantial education and relatively little experience or trade knowledge, files a Title VII charge of sex-based wage discrimination. She alleges that the result of the weight allocated to the factors is that women who are relatively new to the once sex-segregated industry are paid less than men. She alleges, based on job duties, that education should be rated at least as heavily as experience or trade knowledge.

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National Committee on Pay Equity

THE WAGE GAP: Myths and Facts

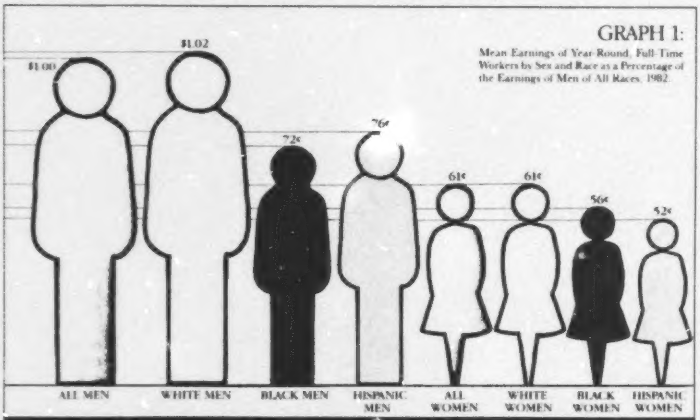
INTRODUCTION

WOMEN WORKERS perform many of the most important jobs in the economy. They are teachers of the nation's children; they are the primary providers of health care in hospitals and nursing homes; they are the backbone of the financial and business office world. Yet, on the average, women who work full-time, year-round are paid approximately 61¢ for every dollar paid to men.* For minority women the wage gap is greater.**

Women employed full-time, year-round by the Federal government earn 63¢ for every dollar earned by men. In state and local governments, women earn 71¢ for every dollar earned by men. And in the private sector, employed women earn only 56¢ for every dollar earned by men. (See table 1 on page 2).

GRAPH 1:

Mean Earnings of Year-Round, Full-Time Workers by Sex and Race as a Percentage of the Earnings of Men of All Races, 1982



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*Annual statistics for year-round, full-time workers, rather than weekly or hourly statistics, are used when available because (1) traditional wage gap figures have been calculated on this basis, and (2) weekly and hourly data can introduce distortions due to multiple job holding and overtime, part-time, and seasonal employment.

**Breakdowns for Asian/Pacific and Native American women are not available and have not been included for that reason.

SOURCE: Current Population Reports, U.S. Census Bureau.

For additional copies or Information: 1201 Sixteenth Street, Northwest • Room 422 • Washington, D.C. 20036 • 202/822-7304

2 [illegible]

TABLE 1:

Mean Earnings of Year-Round Full-Time Workers by Work Experience, Sex, and Race as a Percentage of the Earnings of Men of All Races, 1980

WORK EXPERIENCE	ALL MEN	*Mean Earnings as a Percentage of the Earnings of All Men*						
		WHITE MEN	BLACK MEN	HISPANIC MEN	ALL WOMEN	WHITE WOMEN	BLACK WOMEN	HISPANIC WOMEN
Government Wage & Salary	$20,226	102.3	79.5	86.7	67.8	68.6	63.6	62.7
Federal Government	24 050	103.1	80.8	90.7	62.8	63.1	62.2	N/A
State & Local Government	18,748	102.5	76.0	82.8	71.5	72.7	64.8	62.9
Private Wage* & Salary	21,011	102.9	68.1	72.1	56.0	56.8	50.2	47.9

*See Appendix for Occupational Breakdown, Table A

SOURCE: Current Population Reports, Series P-60, No. 132, Table 58, U.S. Census Bureau

MYTH 1: AVERAGE EARNINGS FOR WOMEN ARE INCREASING RELATIVE TO EARNINGS FOR MEN.

FACT 1: THE EARNINGS GAP BETWEEN WOMEN AND MEN HAS ACTUALLY *WIDENED* SLIGHTLY SINCE THE 1930s. FOR THE LAST TWO DECADES WOMEN HAVE EARNED ESSENTIALLY THREE-FIFTHS OF THE WAGES EARNED BY MEN.

TABLE 2:

Comparison of Median Earnings of Year-Round Full-Time Workers, by Sex, Selected Years 1939-1981

YEAR	*Median Earnings* WOMEN	MEN	WOMEN'S EARNINGS AS A PERCENT OF MEN'S	YEAR	*Median Earnings* WOMEN	MEN	WOMEN'S EARNINGS AS A PERCENT OF MEN'S
1981	$12,001	$20,260	59.2	1966	$3,973	$6,848	58.0
1980	11,197	18,612	60.2	1965	3,823	6,375	60.0
1979	10,151	17,014	59.7	1964	3,690	6,195	59.6
1978	9,350	15,730	59.4	1963	3,561	5,978	59.6
1977	8,618	14,626	58.9	1962	3,446	5,974	59.5
1976	8,099	13,455	60.2	1961	3,351	5,644	59.4
1975	7,504	12,758	58.8	1960	3,293	5,317	60.8
1974	6,772	11,835	57.2	1959	3,193	5,209	61.3
1973	6,335	11,186	56.6	1958	3,102	4,927	63.0
1972	5,903	10,202	57.9	1957	3,008	4,713	63.8
1971	5,593	9,399	59.5	1956	2,827	4,466	63.3
1970	5,323	8,966	59.4	1955	2,719	4,252	63.9
1969	4,977	8,227	60.5	1946	1,710	2,588	66.1
1968	4,457	7,664	58.2	1939	863	1,356	63.6
1967	4,150	7,182	57.8				

SOURCE: *Equal Employment Opportunity for Women: U.S. Policies* U.S. Dept. of Labor, Women's Bureau, 1982

TABLE 3:

Median Income of Year-Round, Full-Time, Workers by Sex and Race, 1955-1981

Percentage of Income of White Men

YEAR	MEDIAN INCOME OF WHITE MEN	ALL WOMEN	WHITE WOMEN	BLACK WOMEN	BLACK & OTHER WOMEN	BLACK MEN	BLACK & OTHER MEN
1981	$21,178	58.8	59.8	54.0	54.8	70.6	74.5
1980	19,720	58.8	59.3	55.4	55.6	70.4	74.7
1975-1979	15,451	58.3	58.7	54.9	55.6	72.8	75.4
1970-1974	10,893	56.7	57.1	49.3	59.4	68.3	70.7
1965-1969	7,697	56.3	57.8	N/A	42.8	N/A	65.8
1960-1964	6,017	57.7	59.5	N/A	38.8	N/A	63.9
1955-1959	4,874	61.1	63.2	N/A	36.4	N/A	60.6

As Table 5 indicates, women of color who work full-time, year-round still earn less on the average than any other group. Since the 1950's, the wage gap between white men and men of other races has decreased and the wage gap between races of women has decreased. But the gap between all men and all women is unchanged.

MYTH 2: WOMEN ARE PAID LESS THAN MEN BECAUSE OF DIFFERENCES SUCH AS EDUCATION AND WORK EXPERIENCE.

FACT 2: DIFFERENCES IN CHARACTERISTICS SUCH AS EDUCATION AND WORK EXPERIENCE ARE *NOT* SUFFICIENT TO EXPLAIN THE WAGE GAP BETWEEN WOMEN AND MEN.

TABLE 4:

Mean Income of Year-Round, Full-Time Workers by Education, Race, and Sex, as a Percentage of Income of Men of all Races, 1980.

Percentage of income of all Men

YEARS OF EDUCATION	MEAN INCOME OF ALL MEN	WHITE MEN	BLACK MEN	WOMEN OF ALL RACES	WHITE WOMEN	BLACK WOMEN
ELEMENTARY						
less than 8 years	$13,183	104.9	81.1	63.7	63.8	64.2
8 years	15,709	101.9	82.9	60.9	62.3	N/A
HIGH SCHOOL						
1-3 years	16,940	104.2	75.5	60.4	61.8	55.7
4 years	20,222	101.7	80.6	60.6	61.4	56.2
COLLEGE						
1-3 years	22,517	102.4	77.8	63.3	64.2	56.4
4 years	28,306	101.8	66.6	57.6	58.1	56.5
5 years	33,085	100.3	83.6	59.0	59.0	59.3
TOTAL	22,560	102.6	69.5	59.3	60.2	53.1

SOURCE: Current Population Reports Series P-60, No. 132, Table 51. U.S. Census Bureau

Studies which attempt to explain the wage gap between women and men on the basis of personal characteristics have found that factors such as education, work experience, labor force commitment, or worker productivity usually account for less than a quarter and never more than half of the earnings difference (*Women, Work and Wages*, Hartmann & Treiman, p. 42).

For example, women have lower earnings than men of equal schooling at every educational level (Table 4). In 1981 employed women who had completed college earned less than men who had not finished high school. Women with a high school diploma earned less than men who had not finished elementary school. In March 1981 both the average employed woman and the average employed man had completed a median of 12.7 years of schooling.

MYTH 3: WOMEN AND MEN HAVE HAVE COME CLOSE TO ACHIEVING EQUALITY IN THE TYPES OF JOBS THEY HOLD.

FACT 3: WOMEN AND MEN TEND TO HOLD DIFFERENT TYPES OF JOBS AND WOMEN HAVE BEEN SEGREGATED IN A SMALL NUMBER OF OCCUPATIONS FOR A LONG TIME.

TABLE 5:

Occupational Distribution by Race and Sex Over Major Occupational Groups, 1982

	WHITE MEN	BLACK MEN	ALL WOMEN	WHITE WOMEN	BLACK WOMEN	PERCENT FEMALE	PERCENT BLACK	PERCENT HISPANIC ORIGIN
WHITE COLLAR WORKERS								
Professional & Technical	17.0	12.7	17.7	18.0	15.7	45.1	6.4	2.6
Managers & Administrators, except farm	15.6	7.4	7.4	8.0	3.9	28.0	3.9	2.9
Sales Workers	6.8	2.9	6.9	7.4	3.3	45.4	3.8	3.3
Clerical Workers	6.1	8.4	34.4	35.1	29.7	80.7	9.4	4.8
BLUE-COLLAR WORKERS								
Craft & Kindred	20.8	15.9	2.0	2.1	1.5	7.0	6.7	5.5
Operatives, except transport	9.5	13.5	8.9	8.2	13.5	40.7	13.5	10.0
Transport equipment operatives	5.2	7.6	0.7	0.7	0.7	8.9	13.1	6.5
Non-farm laborers	6.5	11.8	1.2	1.2	1.5	11.7	15.1	8.2
SERVICE WORKERS								
Private Household	0.05	0.2	2.3	1.9	5.4	96.9	28.2	8.2
Other service workers	8.3	16.9	17.3	16.3	24.4	59.0	15.7	6.2
FARM WORKERS								
Farmers & farm managers	2.5	0.4	0.4	0.4	0.1	11.8	1.2	0.6
Farm laborers & supervisors	1.7	2.3	0.7	0.7	0.5	24.1	10.4	14.5
TOTAL	100.0	100.0	100.0	100.0	100.0	43.5	9.2	5.2
NUMBER (thousands)	50207	5983	43294	37615	5641	—	9156	5175

SOURCE: *Employment and Earnings*, Jan. 1983, Table 22, Bureau of Labor Statistics.

The Department of Labor divides job types into twelve major occupations which are subdivided into 427 detailed occupations. A majority, fifty-two percent, of all employed women work in two of the twelve major occupations—clerical workers and service workers other than private household workers (see Table 5). Out of the 427 detailed occupations, 50% of employed women work in only 20 occupations. In 1982 more than half of all employed women worked in occupations which are 75% female, and 22% of employed women were in jobs that are more than 95% female. Three of the twelve major occupation groups are more than 50% female. Eighty percent of clerical workers are women, 97% of private household workers are women, and 59% of service workers other than private household workers are women.

The degree of job segregation is slightly higher for Black women than for white women. Fifty-four percent of Black women are in two of 12 major occupations, clerical and other service workers, whereas 51% of white women are in those occupations. Black women are more likely to be found in service (29.8%) or blue collar jobs (17.2%) than are white women (19.6% and 12.8%). On the other hand, Black women are less likely to hold white collar jobs (clerical, sales, professional, managerial) than are white women.

It is especially important to note that the entry of women into predominantly male professional and blue collar jobs has *not* reduced the overall degree of segregation. This is because the movement of women into predominantly male jobs has been exceeded by the movement of new women workers into predominantly female jobs.

For every women entering a traditionally male field such as law or auto mechanics, there are more women entering traditional women's jobs. The result of this phenomenon is that in 1982, although 45% of professional and technical workers were women, only 18% of all employed women were professional and technical workers. Twenty-eight percent of all managers and administrators were women, but only 7% of all employed women were in those occupations.

Additionally, as women enter new major occupational groups, they remain segregated in a small number of jobs within those groupings. Professional and technical workers can be subdivided into 50 detailed occupations such as engineer and registered nurse. While 45% of professional and technical workers are women, half of those women are in five of 50 detailed occupations.

MYTH 4: PEOPLE ARE PAID WHAT THEIR JOBS ARE WORTH.

FACT 4: PREDOMINANTLY FEMALE JOBS PAY LESS THAN PREDOMINANTLY MALE JOBS REGARDLESS OF WORTH.

Job evaluation studies are used in wage setting to evaluate the worth of jobs to the employer. In a job evaluation study, each job is rated on the basis of criteria such as skill, effort, responsibility and working conditions and is assigned evaluation points for each rating. The total number of evaluation points of a job is a measure of the job's worth to the employer which can be compared to the worth of any other job in the study. Virtually every job evaluation study that has explicitly tried to be free of sex bias has shown that predominantly female jobs are paid less than predominantly male jobs of comparable worth to the employer. (See Table 6.)

TABLE 6:

Comparison of Worth and Salary of Selected Jobs From Job Evaulation Studies

JOB TITLE	MONTHLY SALARY	NUMBER OF POINTS
MINNESOTA		
Registered Nurse (F)	$1723	275
Vocational Ed. Teacher (M)	2260	275
Health Program Rep. (F)	$1590	238
Steam Boiler Attendant (M)	1611	156
Data Processing Coord. (F)	$1423	199
General Repair Work (M)	1564	134
SAN JOSE, CALIFORNIA		
Librarian I (F)	$ 750	288
Street Sweeper Op. (M)	758	124
Senior Legal Secretary (F)	$ 665	226
Senior Carpenter (M)	1040	226
Senior Accounting Clerk (F)	$ 638	210
Senior Painter (M)	1040	210
WASHINGTON		
Registered Nurse (F)	$1368	348
Highway Engineer 3 (M)	1980	345
Laundry Worker (F)	$ 884	105
Truck Driver (M)	1493	97
Secretary (F)	$1122	197
Maintenance Carpenter(M)	1707	197

SOURCE: Hay Associates. *State of Minnesota Report*, March 1982
Hay Associates. *City of San Jose: Study of Non-management Classes*, November 14, 1980
State of Washington Study. *Public Personnel Management Journal*, Winter 1981/82.

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PAY EQUITY: ELIMINATING THE GAP

THE WAGE GAP between women and men is one of the oldest and most persistent symptoms of sexual inequality in the United States. Pay equity, or comparable worth, attacks the problem of sex-based wage discrimination by mandating that jobs characterized by similar levels of skill, effort, responsibility and working conditions be compensated at similar wage levels regardless of the sex or race of the worker holding the job.

Pay equity is becoming an accepted principle and practice in both the public and private sectors. Through collective bargaining, organizing, and litigation, women are making headway in the effort to close the wage gap. The AFL-CIO, women's and civil rights groups, and a growing number of states and localities have adopted pay equity as official policy. Equally important, individual working women and their families have come to recognize comparable pay as a personal right.

THE NATIONAL COMMITTEE ON PAY EQUITY

PAY EQUITY ADVOCATES have formed the NATIONAL COMMITTEE ON PAY EQUITY to coordinate pay equity activities. The Committee's membership includes international unions, major women's and civil rights organizations, legal and professional associations, state and local governments, and working women and men. Task forces are working on education, litigation, research, collective bargaining and federal employment. Join the more than 150 individuals and organizations who are members of the National Committee on Pay Equity. For information contact the Committee at: 1201 16th Street, N.W., Suite 422, Washington, DC 20036, (202) 822-7304.

Breakdown of Table I Category, "Private Wage and Salary"

APPENDIX A

Mean Earnings of Year-Round, Full-Time Workers by Work Experience, Sex, and Race as a Percentage of the Earnings of Men of All Races, 1980

		Mean Earnings as a Percent of the Earnings of All Men						
WORK EXPERIENCE Private Wage & Salary	**EARNINGS OF ALL MEN**	**WHITE MEN**	**BLACK MEN**	**HISPANIC MEN**	**ALL WOMEN**	**WHITE WOMEN**	**BLACK WOMEN**	**HISPANIC WOMEN**
Professional & Technical	$26,921	103.5	65.7	87.0	59.1	59.2	57.0	N/A
Managers & Administrators	28,131	101.2	62.4	81.6	52.6	52.7	52.1	N/A
Sales Workers	23,277	101.7	N/A	N/A	52.0	52.8	N/A	N/A
Clerical Workers	17,616	102.9	78.2	77.7	64.5	64.4	65.3	61.6
Craft & Kindred Workers	19,616	101.2	83.6	82.6	67.0	68.0	N/A	N/A
Operatives, Incl. Transport	16,451	102.5	84.4	82.8	61.0	62.2	55.7	54.1
Laborers	14,093	100.8	94.9	87.7	72.7	76.7	N/A	N/A
Private Household Workers	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Other Service Workers	12,217	102.2	90.6	86.0	68.7	68.6	68.3	61.7
Works in Agriculture	12,648	104.8	N/A	84.7	N/A	N/A	N/A	N/A

SOURCE: Current Population Reports, Series P-60, No. 132, Table 58, U.S. Census Bureau

APPENDIX B

Annualized Annual Median Weekly Earnings of Full-Time Wage and Salary Workers for Selected Occupations, 1982

OCCUPATIONS WITH LARGE CONCENTRATIONS OF WOMEN	% OF WOMEN	MEDIAN EARNINGS	OCCUPATIONS WITH LARGE CONCENTRATIONS OF MEN	% OF MEN	MEDIAN EARNINGS
Secretaries	99.2%	$12636	Railroad Switch operators	100.0%	$22828
Receptionists	97.5	10764	Firefighters	99.5	20438
Typists	96.6	11804	Plumbers & pipefitters	99.2	21944
Dressmakers, except factory	96.4	9204	Auto mechanics	99.1	15964
Lodging quarters cleaners	96.2	7384	Carpet installers	98.8	15392
Registered nurses	95.6	18980	Surveyors	98.5	17472
Sewers & stichers	95.5	8632	Truckdrivers	97.9	17160
Keypunch operators	94.5	12480	Garbage collectors	97.3	12116
Bank Tellers	92.0	10348	Engineers	94.3	30472
Telephone operators	91.9	13988	Meat cutters & butchers, except manufacturing	93.4	17732
Librarians	83.4	17992	Forklift & tow motor operatives	92.0	15652
Elementary Schoolteachers	82.4	18148	Sales Representatives, Wholesale	86.1	21268
Sales clerks, retail trade	70.0	9776	Mail Carriers	83.0	21840

SOURCE: Bureau of Labor Statistics

MEMBERSHIP APPLICATION

I endorse the Statement of Principles of the National Committee on Pay Equity and would like to join with you to work for change.

Organization or Individual Applicant Name

If organization, head of organization

Designated representative

Street Address

City State Zip Code

Phone Number Task Force I Am Interested In

Membership Category (check one)

☐ Individual ☐ Government Organization

☐ Organization No. of Individuals in Organization ______

Annual Dues, based on a calendar year, are:

Individual	$15.00	Organization	$100.00
Low-Income Individual	7.50	Low-Budget Organization	50.00
Government Organization	25.00	Sustaining Organization	750.00

Dues are Enclosed $______ (Amount)

Additional Contribution $______ (Amount)

The by-laws provide a description of the rights and responsibilities of membership. Each non-governmental organizational member is entitled to one vote.

Please return application to: NATIONAL COMMITTEE ON PAY EQUITY, 1201 16th Street, N.W., Room 422, Washington, D.C. 20036, (202) 822-7304

The National Committee on Pay Equity is a nonprofit organization, and dues and contributions are tax deductible.

National Committee on Pay Equity &
National Institute for Women of Color

WOMEN OF COLOR AND PAY EQUITY

INTRODUCTION

WHILE PAY EQUITY is the single most important issue affecting all women seeking economic equity in the work place, the issue is even more significant to women of color who continue to suffer the brunt of economic discrimination in today's society.

Women of color, as well as White women, are concentrated in a relatively small number of occupations with low wages. Pay equity means the elimination of discrimination in wages for undervalued jobs held predominantly by women and people of color. It requires that wages be based on the worth of a job—not the gender or the race of the people who tend to hold the job.

Over the past twenty years, the wage gap between White women and women of color has narrowed significantly. But the wage gap between women and men has remained essentially the same.

FACT Women of color earn less than either White men, men of color or White women. To an even greater extent than women overall, women of color hold the lowest paying jobs.

FACT More than half of Black and Hispanic female headed households live in poverty.

FACT Women of color are concentrated in a small number of occupational categories, as are White women. 59.[illegible]% of Black women work in only two of twelve major occupations—clerical and service work—compared to 54.3% of White women who work in those two occupations.

FACT Increasingly, women of color are moving into the same occupations as those in which White women work, so that:[1]

- Clerical work now accounts for almost one third of women workers in nearly every racial and ethnic group.
- Only Cuban, Chinese and Native American women have slightly higher percentages in operative, blue collar work than in clerical.
- The jobs held by Black women have shifted significantly from blue collar operative work to white collar work: clerical, professional, technical, managerial and sales.
- Mexican American and Puerto Rican women remain concentrated in operative occupations, although this occupational category is second for both of these populations to clerical work.

Over the last two decades, women of all races and ethnic groups have become more alike in the jobs they perform and the wages they earn, although important differences remain with women of color earning less than any other group.

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[1] U.S. Bureau of the Census

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WAGES

On the average, women who work full time, year-round are paid approximately 61¢ for every dollar paid to men.[1] For women of color, the gap is greater. As graph I indicates, for every man's dollar in 1981, Hispanic women earned 52¢, Black women 56¢, and White women 61¢.[2]

The 1981 median incomes of full-time workers in all occupations tell the story further:

White Men	**$21,178**	**White Women**	**$12,665**
Black Men	**14,984**	**Black Women**	**11,438**
Hispanic Men	**14,981**	**Hispanic Women**	**11,917**

Over the last two decades, the earnings of White women as a percentage of the earnings of White men have remained constant—at about 60%. The wages of women of color, on the other hand, increased dramatically (as a percentage of White men's earnings) during the period 1955-1975 (as shown in Table I on page 3) only to settle in at about 55% over the last decade.

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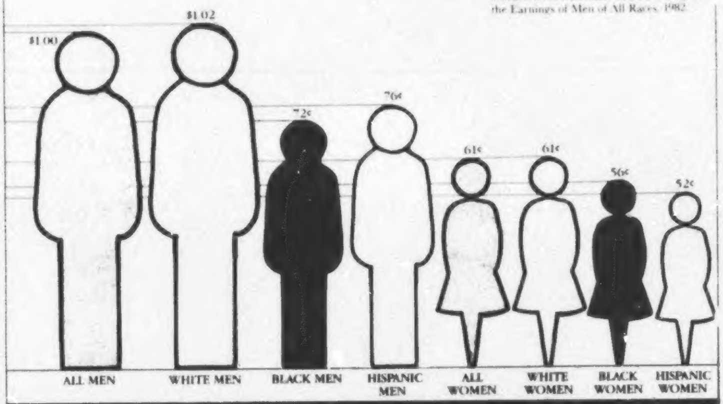
[1] Annual statistics for year-round, full-time workers, rather than weekly or hourly statistics, are used when available because (1) traditional wage gap figures have been calculated on these basis, and (2) weekly and hourly data can introduce distortions due to multiple job holding and overtime, part-time, and seasonal employment.

[2] Breakdowns for Asian/Pacific and Native American women are not available and are not included for that reason.

GRAPH 1:

Mean Earnings of Year-Round, Full-Time Workers by Sex and Race as a Percentage of the Earnings of Men of All Races, 1982



SOURCE: Current Population Reports, U.S. Census Bureau

NATIONAL COMMITTEE ON PAY EQUITY

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TABLE 1:

Median Income of Year-Round, Full-Time Workers by Sex and Race, 1955-1981

YEAR	MEDIAN INCOME OF WHITE MEN	*Percentage of Income of White Men*					
		WOMEN OF ALL RACES	WHITE WOMEN	BLACK WOMEN	BLACK & OTHER WOMEN	BLACK MEN	BLACK & OTHER MEN
1982	$22,232	61.5	62.3	55.7	56.6	71.0	75.2
1981	21,178	58.8	59.8	54.0	54.8	70.6	74.5
1980	19,720	58.8	59.3	55.3	55.6	70.4	74.7
1975-1979	15,451	58.3	58.7	54.9	55.6	72.8	75.4
1970-1974	10,893	56.7	57.1	49.3	50.4	68.3	70.7
1965-1969	7,697	56.3	57.8	N/A	42.8	N/A	65.8
1960-1964	6,017	57.7	59.5	N/A	38.8	N/A	63.9
1955-1959	4,874	61.1	63.2	N/A	36.4	N/A	60.6

SOURCE: Current Population Reports, Series P-60, #140 U.S. Census Bureau

FEMALE-HEADED HOUSEHOLDS AND POVERTY RATES FOR FAMILIES

WOMEN OF COLOR account for the highest percentage of female-headed, single parent households and, likewise, the highest percentage of families that live in poverty (income of less than $9,862 for a family of four).

Increasingly, women and their children account for the

Percent of households maintained by a married couple (1982):
84.5% of White households
55.1% of Black households
73.0% of Hispanic households

Percent of two-parent families that live in poverty (1981):
6.3% of White households
15.6% of Black households
15.4% of Hispanic households

Percent of households headed by a single female (1982):
12.4% of White households
40.6% of Black households
22.7% of Hispanic households

Percent of female-headed families that live in poverty (1981):
27.4% of White households
52.9% of Black households
53.2% of Hispanic households

SOURCE: U.S. Bureau of the Census

nation's poor—more than a third of single mothers with children under six who worked full time at paid labor at some point in 1977 were poor—and this situation is compounded many times over for women of color. By 1977, a woman heading a family was 5.7 times more likely to be poor than a man, and a Black woman was 10 [illegible] times more likely—and a Hispanic woman 11 times more likely—to be poor than a White man. There is even a wide variation among groups of Hispanics, for instance, a Puerto Rican woman was 15 times more likely to be poor than a White man.

OCCUPATIONAL SEGREGATION

ALTHOUGH THERE are still differences in the types of jobs held by different groups of women (see Table 2), the single most important source of women's low earnings is their concentration in a relatively few job categories with low wages.

In 1979, for example, over 35% of all women were employed as clerical workers: 29% of Black women, 31.1% of Mexican women, 38.4% of Puerto Rican women, 31.2% of Cuban women, and 35.9% of White women (see Table 2). The average wage for typists (who are 96.6% female), for example, in 1982 was $11,804 compared to $15,342 for carpet installers (98.8% male) and $21,840 for mail carriers (83% male).

Affirmative action and equal pay for equal work laws have helped women of color and White women find new jobs and higher pay. But the majority of all women continue to work in overwhelmingly female jobs where wages are illegally depressed.

TABLE 2:

Occupational Distribution of Employed Women 16 Years Old and Over by Race and Type of Spanish Origin, 1979

	WHITE WOMEN	BLACK WOMEN	MEXICAN WOMEN	PUERTO RICAN WOMEN	CUBAN WOMEN
WHITE COLLAR	66.5	49.7	46.1	56.6	46.7
Professional Managerial	23.2	17.6	9.9	14.6	8.9
Sales	7.4	3.1	5.1	3.6	6.6
Clerical	35.9	29.0	31.1	38.4	31.2
BLUE COLLAR	14.2	18.1	28.1	26.4	41.9
Crafts	1.9	1.2	1.8	2.2	3.9
Operatives	11.0	15.3	25.0	23.9	36.8
Laborer	1.3	1.6	1.3	0.8	1.2
FARM WORKER	1.3	0.8	2.4	0.9	0.0
SERVICE	18.1	31.5	23.4	16.1	11.4

SOURCE: U.S. Bureau of the Census. 1981. Persons of Spanish Origin in the United States: March 1979. *Current Population Reports*, Series P-20, No. 354, pp. 29. Washington, D.C.: USGPO.

U.S. Bureau of Labor Statistics. 1980. *Employment and Earnings*, Vol. 27, No. 1.

UNEMPLOYMENT RATES

WOMEN OF COLOR, in addition to the economic hardship of the lack of pay equity, have also suffered severely high unemployment rates over the last three years.

	1980	1981	1982
White Men	6.1%	6.5%	8.8%
Black Men	14.5%	15.7%	20.1%
Hispanic Men	9.7%	10.2%	13.6%
White Women	6.5%	6.9%	8.3%
Black Women	14.0%	15.6%	17.6%
Hispanic Women	10.7%	10.8%	14.1%

SOURCE: Bureau of Labor Statistics, division of employment and unemployment analysis

SUMMARY

WOMEN OF COLOR continue to encounter occupational segregation and wage discrimination. They comprise a large share of those who hold low paying clerical, service and blue collar jobs.

A high proportion of families of color are headed up by single women—and thus the need for an equitable wage is critical—yet, ironically, these are the women most likely to be unemployed and underpaid.

The twin barriers of gender discrimination and racial and ethnic discrimination are devastating. In the last twenty years, the number of persons in poor families headed by women of color has increased by more than 50%. By any measure, the social cost of this poverty to future generations is enormous.

Certainly the goal of economic equality for women of color cannot be realized until concerted efforts are made to eradicate the job and wage discrimination based on both race and sex that undermines economic potential in the American labor force.

PAY EQUITY: ELIMINATING THE GAP

THE WAGE GAP between women and men is one of the oldest and most persistent symptoms of sexual inequality in the United States. Pay equity, or comparable worth, attacks the problem of sex-based wage discrimination by mandating that jobs characterized by similar levels of skill, effort, responsibility and working conditions be compensated at similar wage levels regardless of the sex or race of the worker holding the job. The goal of pay equity is to raise wages for undervalued jobs held predominantly by women and minorities.

Pay equity is becoming an accepted principle and practice in both the public and private sectors. The Civil Rights Act of 1964 forbids wage discrimination among jobs which are the same, as well as those which are different but comparable. Through collective bargaining, organizing and litigation, women are making headway in the effort to close the wage gap. The AFL-CIO, women's and civil rights groups, and a growing number of states and localities have adopted pay equity as official policy. Equally important, individual working women and their families have come to recognize comparable pay as a personal right.

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NATIONAL INSTITUTE FOR WOMEN OF COLOR

THE NATIONAL INSTITUTE for Women of Color (NIWC), founded in 1981, is a non-profit organization created to promote economic and educational equity for women of color (Black, Hispanic, Asian-Pacific, American Indian, and Alaskan Native).

With the broad purpose of "fostering communication and cooperation among women of color," NIWC strives to build leadership skills, educate the public about basic needs and issues; create sensitivity to racial and ethnic similarities and differences; and establish and strengthen a communications network.

In its short history, NIWC has initiated several priorities that include:

- regular publication of Brown papers to educate the public on critical issues relevant to women of color.
- solidification of a network for women of color through an annual National Strategies Conference held in October.
- promotion of educational and employment programs geared toward women of color.
- publication of fact sheets on pertinent issues and statistics, such as "Economic Facts" and "Population Facts" on women of color.

For more information on NIWC activities, contact: Sharon Parker, NIWC, 1712 N St. NW, Washington, DC 20036, 202/466-2377. Contributions to NIWC are welcomed and tax deductible.

NATIONAL COMMITTEE ON PAY EQUITY

PAY EQUITY ADVOCATES have formed the National Committee on Pay Equity—the only national coalition working exclusively to achieve equal pay for work of comparable value. The Committee has over 150 organizational and individual members, including international labor unions and major women's and civil rights groups as well as educational and legal associations.

The goals of the National Committee include:

- providing leadership, coordination and strategy directions to members and other comparable worth advocates.
- providing assistance and information to the growing number of public officials, labor unions, women's groups and other organizations and individuals pursuing pay equity.
- stimulating new comparable worth activities.
- bringing national and local attention to this issue.

For membership and other information, contact: Joy Ann Grune, the National Committee on Pay Equity, 1201 16th Street, N.W., Suite 422, Washington, DC 20036, 202/822-7304.

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NATIONAL COMMITTEE ON PAY EQUITY

Representative **Snowe**. Thank you. I appreciate your statement and the full text of it will be included in the record.

Obviously there's no substitute for strong enforcement of existing laws and that is a problem which you mentioned. Because of the recent activity here in Congress, including a number of hearings, and the fact that Mr. Thomas, Chairman of the EEOC, has testified at several of these hearings, do you assess that there's been a change of attitude in the EEOC? Can we expect to see any change in approach or direction in the EEOC in the coming months?

Mr. **Turner**. Well, it's hard to tell whether it's a smokescreen or something more substantial. Chairman Thomas says that there is no change in policy, while at the same time he's announcing very different directions for future activity in the Commission.

Ms. Wilson, you might want to comment on that.

Ms. **Wilson**. Well, he did say on the eve of the hearing before Congressman Frank that he was forming a task force on the issue, but he's been telling the National Committee on Pay Equity that he's been trying to target cases on this issue for about 2 years now. So it's hard to take anything he says seriously in this area.

Certainly we would welcome some action in the area, but we have yet to see it. There are hundreds of charges there that we know are very strong cases. We met with Chair Thomas on these and told his people to focus on and to bring just one case—just bring one case and make a beginning, and yet he's refused. Instead, they're still talking about guidelines and broad policy changes.

So I think we have waited long enough at this point and any criticism is totally justified.

Representative **Snowe**. How many cases are before the EEOC? I know somebody earlier testified that there were about 254 cases pending before the EEOC. Is that an accurate count?

Ms. **Wilson**. Yes. We got that count because he refused to cooperate with the National Committee on Pay Equity, despite his professed desire to do so, in giving us voluntarily the pending charges. We were forced to make a Freedom of Information Act request, and it's as a result of that that we were able to find out how many pending sex-based wage discrimination charges they had before them.

We still have not been able to determine how many of those involved pay equity charges. We think an overwhelming number of ones that we know about do. He is still yet to comply with our request for refining what exactly these charges involve, whether they involve different jobs which would be pay equity or substantially equal jobs which would be Equal Pay Act charges. But that's where the figures come from, and he was forced to give those to us under the law. When we've pointed out the ones we've known about and asked him to investigate them, he has completely stonewalled us.

Representative **Snowe**. I understand he testified recently and suggested that he would be willing to prosecute *Gunther*-type cases. Is that true? Is that something that we can expect?

Ms. **Wilson**. Well, we know that there are pending a number of Gunther-type cases. The AFSCME cases which Mr. Newman detailed to you this morning are all *Gunther*-type, and *IUE-Westinghouse* cases, where the State or public body conducted their own study and then failed to implement the results of their study.

That's the case in Fairfax County involving the librarians. That's the case in Nassau County. That's the case in Wisconsin. And that fact has been pointed out to EEOC repeatedly that these are all *Gunther*-type charges.

So, as you can tell from what I'm saying, we are totally frustrated.

Representative **Snowe**. What is their response? Do they have a policy on pay equity at all?

Ms. **Wilson**. When you pin them down, they say, well, it's the job of the general counsel to bring these cases forward to the Commission and he has not done that and so we're forming this task force; and then you talk to the general counsel and the general counsel says that it's the job of the field staff that's under the EEOC Commissioners to bring these cases up to the general counsel for his attention. No one wants to take responsibility for doing nothing.

Mr. **Turner**. I think that has to add up to the conclusion that they do not have a policy of moving these cases forward; yet they say they do, which has to mean that they will have it. It's hard to say what's going to happen in the future. Certainly we hope that the increased public pressure will produce some forward movement, but it's difficult to tell.

Representative **Snowe**. What about the private sector? What is happening there? Do you see any activity or upgrading of occupations held by women? And, in the States, has the committee been monitoring those activities?

Mr. **Turner**. As we mentioned, we have just conducted a survey of State and local government initiatives in that regard and I think the results are fairly impressive. I'm sorry we have not been able to complete publication of that before these hearings. We would have been happy to turn over those results to you, and we will forward them to your office as soon as they are available.

In the private sector, more generally, Ms. Wilson?

Ms. **Wilson**. Well, most of the action is taking place in the State and local area. There's been far less in the private sector and we attribute that largely to the failure of the Equal Employment Opportunity Commission to do anything in this area. No matter how altruistic an employer is, if they do not fear the threat of legal action or cannot persuade their superiors that unless we do something we're vulnerable under the law, then there is not much impetus—especially in hard economic terms—for them to do anything. That is what has happened repeatedly. I've talked with management attorneys who said that we can't get the employees to move in this area because they say, "What are our chances of getting sued?" And when they tell them almost next to none, then naturally they are reluctant to do anything.

In the public area, by contrast, you do have more of the force of public opinion. You have the fact that the State and local legislators, the State and local government executives, are up for reelection repeatedly. They are sensitive to the gender gap and they are therefore more responsive to the issue that's most important to women, and I think that's why we're seeing much more in the area.

Westinghouse doesn't have to fear the ballot box, and except for people suing them, they haven't had to fear from anybody else, and most of the large employers in the country, I'm afraid, are the same way.

So if you just had a little enforcement by the Government agencies entrusted with that function, it would go a long way to providing substantial pay equity in the private sector.

Mr. **Turner**. We've seen an unfortunately comparable development before the National Labor Relations Board where a refusal to make decisions on cases has resulted in fewer charges being filed. After all, there are only limited resources that people have in the labor movement or in the women's or civil rights movement to pursue cases of this type. And we also see the same lack of desire or lessened desire by employers to comply with the underlying statute, because they feel that they will not be pressured.

I think the number of cases that really are out there possibly far exceed the 254 that were discovered in the Freedom of Information request, but the lack of effort on the part of the EEOC is substantially undermining progress out there in the real world in terms of achieving pay equity and having workers be able to assert their own rights. That's the real cost. It's not just unfortunate delay.

Representative **Snowe**. You heard earlier from some of the witnesses who happen to be economists, and who were talking about the comparable worth policy. They said that in fact it might hurt women rather than help them by increasing unemployment or creating increased competition for those jobs and therefore deflating their salaries.

From your experience on the Committee on Pay Equity, have you seen any indication that the comparable worth type policy or the job evaluation studies, would, in fact, hurt women rather than help them?

Mr. **Turner**. Let me answer that very generally as the Industrial Union Department's director of economic policy, if I could put on my other hat for a moment, and then ask Ms. Wilson to comment on results in specific cases.

As we state in the testimony presented today, the setting of social standards—a case we are very familiar with, is the Fair Labor Standards legislation in this country and in lots of other countries over the course of the last century or more—has been done to achieve minimum norms; norms that are considered to be socially necessary. It is not the job of policies like that to achieve full employment. They are policies and statements about standards and values and what we believe in as a society.

The maintenance of full employment is a set of policies at quite another level—of budget and taxes and monetary policy and international trade and so forth—that is meant to regulate the quantity of jobs. The result that one would get from setting social standards would be a more equitable distribution of opportunities and incomes within whatever level of employment or lack of employment for the society as a whole that would obtain.

Now I think it's probably true that if, in some disastrous future that one could imagine, we had many tens of millions of unemployed in this country, for instance, there might be people who would be willing to work at some fraction of the minimum wage and the argument can be made: Well, the minimum wage needs to be lowered so that we can move back to full employment. And jobs that you could have in this country at $1 an hour aren't here when the minimum wage is $3.35, but those are jobs which we say we don't want. It's not the kind of society we want to live in. We want to have a society with a minimum of equity and that's why we have policies of this other type.

The maintenance of full employment as a goal for the society as a whole, not any particular activity, is addressed by full employment policies and it's really irrelevant as a matter of national social policy to the question of pay equity.

Representative SNOWE. Well, thank you very much for sharing your insight and what the Committee on Pay Equity is doing. I appreciate it. Thank you for being here.

I'd like to include in the record a written opening statement by Senator Jepsen as well.

[The written opening statement of Senator Jepsen follows:]

Written Opening Statement of Hon. Roger W. Jepsen

AS A FATHER WITH THREE WORKING DAUGHTERS, I HAVE A PERSONAL INTEREST IN SEEING THAT LAWS REQUIRING EQUAL PAY FOR EQUAL WORK ARE ENFORCED, AND ENFORCED WITH VIGOR. SEX-BASED DISCRIMINATION IN EMPLOYMENT OR PAY IS AGAINST THE LAW. EQUAL PAY FOR EQUAL WORK · THAT IS THE LAW.

RECENTLY, BARRON'S FINANCIAL MAGAZINE CITED A STUDY WHICH SHOWED THAT WHEN AGE GROUPS ARE USED TO COMPARE MEN'S AND WOMEN'S AVERAGE PAY, THE YOUNGER WOMEN'S CATEGORIES SIGNIFICANTLY EXCEED THE MUCH-QUOTED 62-CENT PAY COMPARISON. I BELIEVE THIS REFLECTS THE INCREASING INCENTIVES WOMEN HAVE IN OUR CHANGING ECONOMY TO STUDY LONGER, WORK HARDER, AND CONCENTRATE ON CAREERS OUTSIDE THE HOME IF THEY SO CHOOSE. THESE CHOICES OF WOMEN ARE INCREASING THEIR EARNING POWER.

OTHER STUDIES SHOW THAT WHEN SINGLE MEN'S AND WOMEN'S PAY AVERAGES ARE COMPARED, THERE IS NO SIGNIFICANT PAY GAP. THUS, MARRIAGE CAN BE SEEN TO AFFECT THE EARNINGS OF MEN AND WOMEN IN DIFFERENT WAYS. MEN HAVE A GREATER INCENTIVE TO INCREASE THEIR EARNINGS WHEN PROVIDING FOR FAMILIES AND MANY WOMEN CHOOSE TO HAVE PRIMARY RESPONSIBILITY FOR THE HOUSEHOLD. THE CHOICE OF WOMEN TO WORK IN THE HOME TO CARE FOR THEIR HUSBANDS AND CHILDREN CAN AFFECT THEIR

EARNING POWER IF THEY DECIDE TO GO INTO THE LABOR FORCE. SUCH CHOICES SHOULD BE RESPECTED AND ENCOURAGED.

FOR THOSE WOMEN WHO CHOOSE TO WORK OUTSIDE THE HOME, I AM ENCOURAGED TO SEE MORE YOUNG WOMEN ENTERING FIELDS THAT WERE PREVIOUSLY "FOR MEN ONLY". BETWEEN 1970 AND 1980, THE PERCENTAGE OF WOMEN MANAGERS INCREASED FROM 18 PERCENT TO 30 PERCENT, ACCORDING TO THE BUREAU OF LABOR STATISTICS. THE PROPORTION OF MEN AND WOMEN WORKING IN SEX-NEUTRAL OCCUPATIONS -- OCCUPATIONS IN WHICH MEN AND WOMEN ARE REPRESENTED APPROXIMATELY EQUALLY -- ALSO INCREASED.

YET I CAN APPRECIATE THE IMPATIENCE THAT SOME WOMEN MUST FEEL. AS LONG AS YOUNG WOMEN ARE TAUGHT THAT THERE ARE SOME JOBS THEY CANNOT OR SHOULD NOT ASPIRE TO, AS LONG AS EMPLOYERS ASSIGN JOBS ON THE BASIS OF SEX RATHER THAN QUALIFICATIONS, AS LONG AS THERE IS UNEQUAL PAY FOR EQUAL WORK, MORE REMAINS TO BE DONE. AND IT IS BECAUSE THERE IS MORE TO DO THAT I QUESTION WHETHER WE CAN AFFORD TO SQUANDER OUR LIMITED RESOURCES AND ENERGIES ON THE CONCEPT OF COMPARABLE PAY FOR JOBS OF COMPARABLE WORTH.

WHAT IS "COMPARABLE WORTH"? HOW DOES A COMPUTER PROGRAMER COMPARE TO A PROFESSOR OF FRENCH? DOES IT MATTER IF THERE IS A SHORTAGE OF COMPUTER PROGRAMERS AND A SURPLUS OF FRENCH TEACHERS?

HAVE WE CONTRIBUTED TO THE CAUSE OF EQUALITY IF WE REMOVE THE INCENTIVES WOMEN NOW HAVE -- FOR THE FIRST TIME -- TO ENTER NONTRADITIONAL FIELDS?

HAVE WE SOMEHOW ACHIEVED "FAIRNESS" IS WE LEGISLATE HIGHER WAGES FOR SECRETARIES AND THEN FIND THAT THEIR EMPLOYMENT OPPORTUNITIES HAVE FALLEN?

WE MUST WORK AGGRESSIVELY TO OPEN NONTRADITIONAL FIELDS TO WOMEN WITHOUT DISCOURAGING WOMEN WHO CHOOSE TO BE PRIMARY HOMEMAKERS. JOB POSTING MUST BE USED TO ENSURE THAT WOMEN IN LOW PAYING JOBS ARE AWARE OF OTHER JOB OPPORTUNITES. SCHOOLS AND GUIDANCE COUNSELORS MUST WORK TO MAKE YOUNG WOMEN AWARE OF WHAT DIFFERENT CAREER CHOICES WILL MEAN. AND OUR NATION'S LAWS AGAINST SEX DISCRIMINATION IN EMPLOYMENT MUST BE VIGOROUSLY ENFORCED SO THAT INDIVIDUALS COMPETING IN THE LABOR MARKET WILL HAVE THE SAME OPPORTUNITIES REGARDLESS OF SEX.

EFFORTS, HOWEVER WELL INTENDED, TO LEGISLATE THE WORTH OF DIFFERENT OCCUPATIONS WITHOUT REFERENCE TO THE MARKET AND THE CHOICES OF WOMEN ARE LIKELY TO PROVE A COSTLY FAILURE AND WILL BRING HARDSHIP ON THE VERY WOMEN IT IS SUPPOSED TO HELP.

Representative **Snowe**. This concludes the third installment of our hearings. We have one more to go. So I appreciate your patience.

[Whereupon, at 1:10 p.m., the committee adjourned, subject to the call of the Chair.]

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